

By the Committee on Banking and Insurance; and Senator Fasano

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1 A bill to be entitled
2 An act relating to reverse mortgage loans; creating s.
3 494.00297, F.S.; providing definitions; specifying who
4 may originate or make a loan; specifying the
5 requirements for reverse mortgage loans; authorizing
6 certain fees and charges for loans; requiring mortgage
7 lenders to disclose certain loan information to
8 mortgagors; prohibiting lenders from requiring reverse
9 mortgage loan applicants to purchase certain financial
10 products; providing counseling and consumer education
11 requirements for reverse mortgage lenders and the
12 mortgagor; providing for construction; authorizing the
13 Financial Services Commission to adopt rules;
14 providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 494.00297, Florida Statutes, is created
19 to read:

20 494.00297 Reverse mortgage loans.—

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

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

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

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

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

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

31 2. Holds title to the entire property that is the security
32 for the reverse mortgage loan, or if there are multiple
33 mortgagors, all the mortgagors collectively hold title to the
34 entire property;

35 3. Has received adequate counseling, as provided in
36 subsection (7); and

37 4. Has received full disclosure of all costs charged to the
38 mortgagor, including costs of estate planning, financial advice,
39 and other services that are related to the reverse mortgage loan
40 but are not required to obtain the loan, which disclosure
41 clearly states which charges are required to obtain the loan and
42 which are not required to obtain the loan.

43 (e) "Originating a reverse mortgage loan" means taking an
44 application for a reverse mortgage loan pursuant to this
45 section.

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

48 (g) "Reverse mortgage loan" or "loan" means a loan
49 providing future payments which is secured by a mortgage, deed
50 of trust, or equivalent security interest in the principal
51 residence of the mortgagor, excluding loans made under the
52 program. Future payments include lump sum, periodic cash
53 advances, or lines of credit based on the equity or the value in
54 the place of residence.

55 (2) MORTGAGE LENDERS.—Only mortgage lenders and mortgage
56 brokers licensed under ss. 494.001-494.0077 may engage in
57 originating or making a reverse mortgage loan under this
58 section.

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

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

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

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

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

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

76 3. The property ceases to be the principal place of
77 residence of the mortgagor or, for a period of longer than 12
78 consecutive months, a mortgagor fails to occupy the property
79 because of physical or mental illness and the property is not
80 the principal residence of at least one other mortgagor.

81 4. An obligation of the mortgagor under the mortgage is not
82 performed.

83 (d) The loan requires no payment of principal or interest
84 until the entire loan becomes due and payable.

85 (4) ORIGINATION FEES.—

86 (a) The mortgage lender may collect, in cash at the time of
87 closing or through an initial payment under the reverse mortgage

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88 loan, a charge to compensate the lender for expenses incurred in
89 originating and closing the loan, which may be fully financed by
90 the loan mortgage. The origination fee is equal to 2 percent of
91 the maximum claim amount of the loan, up to a maximum claim
92 amount of \$200,000, plus 1 percent of any portion of the maximum
93 claim amount which is greater than \$200,000 and is subject to a
94 maximum origination fee of \$6,000.

95 (b) The mortgagor may not be required to pay any additional
96 origination fee of any kind to a mortgage broker or loan
97 originator. A mortgage broker's fee may be included as part of
98 the origination fee only if the mortgage broker is engaged
99 independently by the homeowner and if there is no financial
100 interest between the mortgage broker and the mortgage lender.

101 (5) DISCLOSURES.—

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

107 1. The interest rate.

108 2. Whether the rate is fixed or adjustable.

109 3. If the rate is adjustable, the frequency of the rate
110 change and the maximum amount the rate can change in any period.

111 4. The public index to which any changes in the interest
112 rate are tied.

113 5. The term of the loan.

114 6. The schedule of payments paid out during the term of the
115 loan.

116 7. The conditions under which repayment is required.

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117 (b) The commission may adopt rules requiring mortgage
118 lenders to make specific disclosures to mortgagors regarding a
119 reverse mortgage loan. In adopting such rules, the commission
120 shall consider general industry standards as provided in the
121 federal Real Estate Settlement Procedures Act, as amended, 12
122 U.S.C. ss. 2601 et eq., the federal Truth in Lending Act, as
123 amended, 15 U.S.C. ss. 1601 et seq., the federal Housing and
124 Economic Recovery Act of 2008, Pub. L. No. 110-289, the federal
125 Housing and Community Development Act of 1987, 12 U.S.C. 1715z-
126 20, and any regulations adopted under such acts.

127 (6) CROSS-SELLING.—

128 (a) A mortgage lender or any other party may not require an
129 applicant for a reverse mortgage loan to purchase insurance, an
130 annuity, or similar financial product, excluding title insurance
131 or hazard, flood, or other peril insurance, as a condition of
132 obtaining a reverse mortgage loan.

133 (b) A mortgage lender or a mortgage broker arranging a
134 reverse mortgage loan may not participate in, be associated
135 with, or employ any party that participates in or is associated
136 with any other financial or insurance activity unless the
137 mortgage lender or mortgage broker demonstrates to the office
138 that the mortgage lender or other party maintains, or will
139 maintain, firewalls and other safeguards designed to ensure
140 that:

141 1. Individuals participating in the origination of the
142 reverse mortgage loan have no involvement with, or incentive to
143 provide the mortgagor with, any other financial or insurance
144 product; and

145 2. The mortgagor will not be required, directly or

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146 indirectly, as a condition of obtaining a reverse mortgage, to
147 purchase any other financial or insurance product.

148 (7) COUNSELING AND CONSUMER EDUCATION.—Before making a
149 reverse mortgage loan, a mortgagor must receive counseling as
150 provided in this subsection.

151 (a) The mortgage lenders shall provide the mortgagor with a
152 list of at least five counseling agencies approved by the
153 department, including at least two agencies that can provide
154 counseling by telephone. The counseling agency must be an
155 independent third party that is not, directly or indirectly,
156 associated with or compensated by a party involved in:

157 1. Originating or servicing the reverse mortgage loan;
158 2. Funding the loan underlying the reverse mortgage loan;

159 or

160 3. Funding the sale of annuities, investments, long-term
161 care insurance, or any other type of financial or insurance
162 product.

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

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

168 2. Other reverse mortgage loan options that are or may
169 become available to the mortgagor, including, but not limited
170 to, sale-leaseback financing, deferred payment loans, and
171 property tax deferrals.

172 3. The financial implications of entering into a reverse
173 mortgage loan.

174 4. A disclosure that a reverse mortgage loan may have tax

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175 consequences, affect eligibility for assistance under federal
176 and state programs, and have an impact on the estate and heirs
177 of the mortgagor.

178 5. Any other information that the commission may require by
179 rule.

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

184 (d) Upon the request of the mortgagor, other parties shall
185 be permitted to attend the counseling with the mortgagor. This
186 paragraph does not create an obligation or duty on the part of
187 the mortgage lender to inform, notify, or advise any other party
188 of the opportunity to attend the counseling.

189 (e) The mortgagor may be assessed a fee for the counseling.
190 The fee may be financed under the loan amount as limited by the
191 department.

192 (f) A mortgage lender may not accept a final and complete
193 application for a reverse mortgage loan from a prospective
194 mortgagor or assess and collect any fees from a prospective
195 mortgagor without first receiving a certification from the
196 mortgagor or the mortgagor's authorized representative that the
197 mortgagor has received counseling from an approved agency.

198 1. The certification must be signed by the mortgagor and
199 the agency counselor and include the dates of the counseling and
200 the names, addresses, and telephone numbers of the counselor and
201 the mortgagor. An electronic facsimile copy of the counseling
202 certification satisfies the requirements of this paragraph.

203 2. The mortgage lender shall maintain the certification in

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204 an accurate, reproducible, and accessible format for the term of
205 the reverse mortgage loan.

206 (8) OTHER PROVISIONS.—

207 (a) For purposes of this section, a property is deemed to
208 be owner-occupied notwithstanding that legal title to the
209 property is held in the name of a trust if the occupant of the
210 property is a beneficiary of the trust.

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

216 (9) RULES.—The commission may adopt rules to administer
217 this section.

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