

1                                   A bill to be entitled  
 2           An act relating to reverse mortgage loans to senior  
 3           individuals; providing purposes; providing definitions;  
 4           providing for application to certain reverse mortgage  
 5           loans; specifying requirements for reverse mortgage loans;  
 6           specifying authorized fees and charges for reverse  
 7           mortgage loans; requiring lenders to provide borrowers  
 8           certain loan information; providing additional lender  
 9           requirements; specifying a statute of limitations for  
 10          collection of loan proceeds; prohibiting lenders from  
 11          requiring reverse mortgage loan applicants to purchase  
 12          certain financial products; specifying prohibited reverse  
 13          mortgage lender or broker activities; providing counseling  
 14          and consumer education requirements for reverse mortgage  
 15          lenders; specifying a reverse mortgage loan as a lien;  
 16          specifying priority of the lien; providing construction;  
 17          providing for treble damages under certain circumstances;  
 18          providing for nonapplication of certain state laws and  
 19          rules to reverse mortgage loans; providing an effective  
 20          date.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

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 24           Section 1. (1) PURPOSES.—The purposes of this section are  
 25           to:  
 26           (a) Meet the special needs of senior homeowners by  
 27           reducing the effect of the economic hardship caused by the  
 28           increasing costs of meeting health, housing, and subsistence

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29 needs at a time of reduced income, through the issuance of  
30 reverse mortgage loans to permit the conversion of a portion of  
31 accumulated home equity into liquid assets.

32 (b) Encourage and increase the involvement of mortgagees  
33 and participants in the mortgage markets in the making and  
34 servicing of reverse mortgage loans for senior homeowners.

35 (c) Protect senior homeowners from abuse and fraud.

36 (d) Encourage the use by senior homeowners interested in  
37 reverse mortgage loans of entities approved by the United States  
38 Department of Housing and Urban Development for participation in  
39 the Federal Housing Administration's Home Equity Conversion  
40 Mortgage Program and any alternative proprietary products.

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

42 (a) "Broker" means an entity the activity of which in the  
43 reverse mortgage loan process is limited to taking applications,  
44 discussing terms and rates with the borrower, and undertaking  
45 similar activities, but is not identified on the promissory note  
46 as the payee and does not maintain its own funds for making  
47 reverse mortgage loans.

48 (b) "Business day" means a day on which the offices of a  
49 lender are open to the public for carrying on substantially all  
50 of the lender's business functions.

51 (c) "Department" means the United States Department of  
52 Housing and Urban Development.

53 (d) "Eligible borrower" means any individual who is at  
54 least 62 years of age. A borrower who is incapacitated and  
55 otherwise considered an eligible borrower is eligible for a  
56 reverse mortgage loan if there is an individual who can contract

57 for the borrower as a court-appointed guardian or who possesses  
58 a durable power of attorney for the borrower. If there is a co-  
59 borrower on the loan, the co-borrower must also be at least 62  
60 years of age to be deemed an eligible borrower.

61 (e) "Lender" means an entity that is identified on the  
62 promissory note as the payee, that maintains its own funds,  
63 including warehouse lines, for making reverse mortgage loans,  
64 and that may or may not be approved by the department to  
65 participate in making reverse mortgage loans under the program.

66 (f) "Make a reverse mortgage loan" means the funding and  
67 closing of a reverse mortgage loan subject to this section.

68 (g) "Maximum claim" means the maximum amount of proceeds  
69 over the life of the reverse mortgage loan the borrower is  
70 entitled to receive under the note.

71 (h) "Originate a reverse mortgage loan" means the taking  
72 of an application for a reverse mortgage loan subject to this  
73 section.

74 (i) "Program" means the Home Equity Conversion Mortgage  
75 Program of the Federal Housing Administration.

76 (j) "Reverse mortgage loan" means a nonrecourse loan  
77 secured by real property that meets the following criteria:

78 1. The loan provides a lump sum, periodic cash advances,  
79 and lines of credit to a borrower based on the equity or the  
80 value in a borrower's owner-occupied principal residence.

81 2. The loan requires no payment of principal or interest  
82 until the entire loan becomes due and payable.

83 (k) "Taking an application" means the submission of a  
84 written application for a reverse mortgage loan by the borrower

85 or borrower's representative to the lender, and the borrower or  
86 borrower's representative intends the application to be  
87 considered for approval. The taking of a borrower's contact  
88 information, property address, and similar information or  
89 obtaining the borrower's credit report is not deemed taking an  
90 application.

91 (3) COVERAGE.—This section applies to reverse mortgage  
92 loans originated by or made to eligible borrowers on the  
93 borrower's principal, one-to-four family residential dwelling  
94 and not originated or made under the program, as well as reverse  
95 mortgage loans originated or made under the program.

96 (4) LIMITATIONS AND PARAMETERS.—A reverse mortgage loan  
97 must comply with all of the following:

98 (a) Any prepayment, in whole or in part, shall be  
99 permitted without penalty at any time during the term of the  
100 reverse mortgage loan. For purposes of this section, a penalty  
101 does not include any fees, payments, or other charges that would  
102 have otherwise been due upon the reverse mortgage loan being due  
103 and payable.

104 (b) A reverse mortgage loan may provide for a fixed or  
105 adjustable interest rate or combination of such rates,  
106 including, but not limited to, compound interest, and may also  
107 provide for interest that is contingent upon the value of the  
108 property upon execution of the loan or at the loan's maturity,  
109 or on changes in value between the dates of the loan's closing  
110 and maturity.

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111 (c) If a reverse mortgage loan provides for periodic  
112 advances to a borrower, the advances may not be reduced in  
113 amount or number based upon any adjustment in the interest rate.

114 (d) The reverse mortgage loan shall become due and payable  
115 upon the occurrence of any of the following events:

116 1. The home securing the loan is sold or title to the home  
117 is otherwise transferred;

118 2. All borrowers cease occupying the home as a principal  
119 residence, except as provided in paragraph (e);

120 3. Any fixed maturity date agreed to by the lender and the  
121 borrower occurs; or

122 4. An event occurs that is specified in the loan documents  
123 and that jeopardizes the lender's security.

124 (e) Repayment of the reverse mortgage loan is subject to  
125 the following additional conditions:

126 1. Temporary absences from the home not exceeding 60  
127 consecutive days may not cause the mortgage loan to become due  
128 and payable.

129 2. Extended absences from the home exceeding 60  
130 consecutive days, but less than 1 year, may not cause the  
131 mortgage loan to become due and payable if the borrower has  
132 taken prior action that secures and protects the home in a  
133 manner satisfactory to the lender, as specified in the loan  
134 documents.

135 (f) This section does not require a lender to make a  
136 reverse mortgage loan if the lender has reason to believe the  
137 borrower, acting on his own or acting through the borrower's  
138 guardian or an individual with a durable power of attorney for

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139 the borrower, is unable to enter into a contract for any reason,  
140 including, but not limited to, incapacity or duress. This  
141 paragraph does not create any special legal duty for the lender  
142 to determine the borrower's ability to enter into a contract.

143 (5) FEES AND CHARGES.—

144 (a) A reverse mortgage loan may include costs and fees  
145 that are charged by the lender or the lender's designee,  
146 originator, or servicer, including, but not limited to, costs  
147 and fees charged upon execution of the loan, upon execution of  
148 appreciation on a periodic basis, or upon maturity. The borrower  
149 may also be responsible for any costs of failing to comply with  
150 the reverse mortgage loan contract.

151 (b) All fees are subject to all applicable state and  
152 federal standards.

153 (6) AGREEMENT AND NOTE; DISCLOSURES.—

154 (a) A lender shall provide the borrower, anytime during  
155 the reverse mortgage loan process but before the loan closing,  
156 with a document disclosing in plain language a summary of the  
157 core terms and conditions of the loan. The core terms and  
158 conditions must include:

159 1. Interest rate.

160 2. Whether the rate is fixed or adjustable.

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

163 4. The public index to which any changes in the interest  
164 rate will be tied.

165 5. The term of the loan.

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166       6. The schedule of payment paid out during the term of the  
167 loan.

168       7. The conditions under which repayment is triggered.

169       (b) Lenders that meet Federal Housing Authority  
170 requirements for disclosure are also deemed to meet the  
171 requirements of this subsection.

172       (c) The lender must comply with applicable federal  
173 regulations.

174       (d) The lender's right to collect reverse mortgage loan  
175 proceeds is subject to the applicable statute of limitations for  
176 written loan contracts. Notwithstanding any other provision of  
177 law, the statute of limitations shall commence on the date the  
178 reverse mortgage loan becomes due and payable as provided in the  
179 loan agreement.

180       (7) CROSS-SELLING.—

181       (a) A lender may not require an applicant for a reverse  
182 mortgage loan to purchase an insurance annuity or other similar  
183 financial product, excluding title insurance or hazard, flood,  
184 or other peril insurance, as a condition of obtaining a reverse  
185 mortgage loan. A reverse mortgage lender or a broker arranging a  
186 reverse mortgage loan may not:

187       1. Offer an insurance, annuity, or other similar financial  
188 product, excluding title insurance or hazard, flood, or other  
189 peril insurance, to the borrower prior to the closing of the  
190 reverse mortgage loan or before the expiration of the right of  
191 the borrower to rescind the reverse mortgage loan agreement.

192       2. Refer the borrower to anyone for the purchase of an  
193 insurance, annuity, or other similar financial product,

194 excluding title insurance or hazard, flood, or other peril  
 195 insurance, prior to the closing of the reverse mortgage loan or  
 196 before the expiration of the right of the borrower to rescind  
 197 the reverse mortgage loan agreement.

198 (b) A mortgage originator or any other party that  
 199 participates in the origination of a reverse mortgage loan must  
 200 comply with all applicable state laws and rules and federal laws  
 201 and regulations.

202 (8) COUNSELING AND CONSUMER EDUCATION.—

203 (a) Prior to making a reverse mortgage loan, a lender  
 204 shall:

205 1. Refer the prospective borrower to a housing counseling  
 206 agency approved by the department.

207 2. Provide the borrower with a list of at least five  
 208 counseling agencies approved by the department, including at  
 209 least two agencies that can provide counseling by telephone.

210 (b) A lender may not accept a final and complete  
 211 application for a reverse mortgage loan from a prospective  
 212 applicant or assess and collect any fees from a prospective  
 213 applicant without first receiving a certification from the  
 214 applicant or the applicant's authorized representative that the  
 215 applicant has received counseling from an approved agency. The  
 216 certification shall be signed by the borrower and the agency  
 217 counselor and shall include the dates of the counseling and the  
 218 names, addresses, and telephone numbers of the counselor and the  
 219 borrower. An electronic facsimile copy of the housing counseling  
 220 certification satisfies the requirements of this paragraph. The  
 221 lender shall maintain the certification in an accurate,



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222 reproducible, and accessible format for the term of the reverse  
223 mortgage loan.

224 (c) Counseling may be face to face or by telephone.

225 (d) The information covered in the counseling session  
226 shall include:

227 1. Options other than a reverse mortgage loan that are  
228 available to the homeowner, including other housing, social  
229 service, health, and financial options.

230 2. Other reverse mortgage loan options that are or may  
231 become available to the homeowner, including, but not limited  
232 to, sale-leaseback financing, deferred payment loans, and  
233 property tax deferrals.

234 3. The financial implications of entering into a reverse  
235 mortgage loan.

236 4. A disclosure that a reverse mortgage loan may have tax  
237 consequences, affect eligibility for assistance under federal  
238 and state programs, and have an impact on the estate and heirs  
239 of the homeowner.

240 (e) For borrowers represented by an individual who is a  
241 court-appointed guardian or possesses a durable power of  
242 attorney for the borrower, such individual must complete the  
243 counseling requirements.

244 (f) Upon the request of the borrower, other parties shall  
245 be permitted to attend the counseling with the borrower. This  
246 paragraph does not create an obligation or duty on the part of  
247 the lender to inform, notify, or advise any other party of the  
248 opportunity to attend the counseling.

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249 (g) The borrower may be assessed a fee for the counseling.  
250 The fee may be financed under the loan amount as limited by the  
251 department.

252 (9) OTHER PROVISIONS.—

253 (a) A reverse mortgage loan constitutes a lien against the  
254 subject property to the extent of all advances made pursuant to  
255 the reverse mortgage loan and all interest accrued on such  
256 advances, and that lien shall have priority over any lien filed  
257 or recorded after a reverse mortgage is recorded.

258 (b) For purposes of this section, a property is deemed to  
259 be owner-occupied notwithstanding that legal title to the  
260 property is held in the name of a trust provided the occupant of  
261 the property is a beneficiary of the trust.

262 (c) An arrangement, transfer, or lien subject to this  
263 section may not be invalidated solely because of the failure of  
264 a lender to comply with any provision of this section. However,  
265 this section does preclude the application of any other existing  
266 civil remedies provided by law.

267 (d) A lender who fails to make loan advances as required  
268 in the reverse mortgage loan documents and fails to cure an  
269 actual default after notice as specified in the reverse mortgage  
270 loan documents shall forfeit to the borrower treble the amount  
271 wrongfully withheld plus interest at the legal rate.

272 (e) Any state law or rule applicable to loans, extensions  
273 of credit, or other similar financial instruments that apply  
274 limitations, restrictions, or prohibitions against certain  
275 financial concepts, including, but not limited to, shared equity  
276 lending, collateral-based lending, negative amortization,

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277 | adjustable-rate interest, deferred interest, and payments  
278 | calculated on an interest-only basis, however defined, that  
279 | frustrate the purpose of reverse mortgage loans does not apply  
280 | to reverse mortgage loans.

281 |       Section 2. This act shall take effect July 1, 2010.