

CS/HB 845

2010

1 A bill to be entitled
2 An act relating to reverse mortgage loans; creating s.
3 494.00297, F.S.; providing definitions; limiting
4 originating or making reverse mortgage loans to licensed
5 mortgage lenders and mortgage brokers; specifying
6 requirements for reverse mortgage loans; specifying loan
7 limitations and parameters; authorizing mortgage lenders
8 to impose and collect an origination fee for reverse
9 mortgage loans; specifying origination fee limitations;
10 prohibiting additional origination fees; providing for
11 certain fees to be included in the origination fee;
12 requiring mortgage lenders to provide borrowers certain
13 loan information; providing additional lender
14 requirements; prohibiting lenders from requiring reverse
15 mortgage loan applicants to purchase certain financial
16 products; specifying prohibited reverse mortgage lender or
17 broker activities; providing counseling and consumer
18 education requirements for reverse mortgage lenders;
19 specifying a criterion for a property to be owner-
20 occupied; prohibiting invalidation of arrangements,
21 transfers, or liens under certain circumstances;
22 preserving application of other existing civil remedies
23 provided by law; authorizing the Financial Services
24 Commission to adopt rules; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

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

30 494.00297 Reverse mortgage loans.-

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

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

34 (b) "Making a reverse mortgage loan" means funding and
 35 closing a reverse mortgage loan pursuant to this section.

36 (c) "Maximum claim" means the maximum amount of proceeds
 37 over the life of the reverse mortgage loan the mortgagor is
 38 entitled to receive under the loan.

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

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

41 2. Holds title to the entire property that is the security
 42 for the reverse mortgage loan, or if there are multiple
 43 mortgagors, all the mortgagors collectively hold title to the
 44 entire property.

45 3. Has received adequate counseling, as provided in
 46 subsection (7).

47 4. Has received full disclosure of all costs charged to
 48 the mortgagor, including costs of estate planning, financial
 49 advice, and other services that are related to the reverse
 50 mortgage loan but are not required to obtain the loan, which
 51 disclosure clearly states which charges are required to obtain
 52 the loan and which are not required to obtain the loan.

53 (e) "Originating a reverse mortgage loan" means taking an
 54 application for a reverse mortgage loan pursuant to this
 55 section.

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

58 (g) "Reverse mortgage loan" or "loan" means a loan that
59 provides future payments and is secured by a mortgage, deed of
60 trust, or equivalent security interest in the principal
61 residence of the mortgagor, excluding loans made under the
62 program. Future payments include lump sum, periodic cash
63 advances, or lines of credit based on the equity or the value in
64 the place of residence.

65 (2) MORTGAGE LENDERS.—Only mortgage lenders and mortgage
66 brokers licensed under ss. 494.001-494.0077 may engage in
67 originating or making a reverse mortgage loan under this
68 section.

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

71 (a) Any prepayment of the loan by the mortgagor, in whole
72 or in part, is permitted without penalty at any time during the
73 term of the loan. For purposes of this section, the term
74 "penalty" does not include any fees, payments, or other charges
75 that would have otherwise been due upon the reverse mortgage
76 loan being due and payable.

77 (b) If a reverse mortgage loan provides for periodic
78 advances to a mortgagor, the advances may not be reduced in
79 amount or number based upon any adjustment in the interest rate.

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

82 1. The mortgagor dies and the property is not the
83 principal residence of at least one other mortgagor;

84 2. The mortgagor conveys all of his or her title in the
85 property and no other mortgagor retains title to the property;

86 3. The property ceases to be the principal place of
87 residence of the mortgagor or, for a period of longer than 12
88 consecutive months, a mortgagor fails to occupy the property
89 because of physical or mental illness and the property is not
90 the principal residence of at least one other mortgagor; or

91 4. An obligation of the mortgagor under the mortgage is
92 not performed.

93 (d) The loan may not require payment of any principal or
94 interest until the entire loan becomes due and payable.

95 (4) ORIGINATION FEES.—

96 (a) The mortgage lender may impose and collect, in cash at
97 the time of closing or through an initial payment under the
98 reverse mortgage loan, an origination fee to compensate the
99 lender for expenses incurred in originating and closing the
100 loan, which may be fully financed by the loan mortgage. The
101 origination fee is equal to 2 percent of the maximum claim
102 amount of the loan, up to a maximum claim amount of \$200,000,
103 plus 1 percent of any portion of the maximum claim amount which
104 is greater than \$200,000 and is subject to a maximum origination
105 fee of \$6,000.

106 (b) The mortgagor may not be required to pay any
107 additional origination fee of any kind to a mortgage broker or
108 loan originator. A mortgage broker's fee may be included as part
109 of the origination fee only if the mortgage broker is engaged
110 independently by the homeowner and if there is no financial
111 interest between the mortgage broker and the mortgage lender.

112 (5) DISCLOSURES.—
 113 (a) A mortgage lender shall provide the mortgagor, at any
 114 time during the reverse mortgage loan process but before the
 115 loan closing, with a document disclosing in plain language a
 116 summary of the core terms and conditions of the loan. The terms
 117 and conditions must include, but are not limited to:
 118 1. The interest rate.
 119 2. Whether the rate is fixed or adjustable.
 120 3. If the rate is adjustable, the frequency of the rate
 121 change and the maximum amount the rate can change in any period.
 122 4. The public index to which any changes in the interest
 123 rate will be tied.
 124 5. The term of the loan.
 125 6. The schedule of payments paid out during the term of
 126 the loan.
 127 7. The conditions under which repayment is triggered.
 128 (b) The commission may adopt rules requiring mortgage
 129 lenders to make specific disclosures to mortgagors regarding a
 130 reverse mortgage loan. In adopting such rules, the commission
 131 shall consider general industry standards as provided in the
 132 federal Real Estate Settlement Procedures Act, as amended, 12
 133 U.S.C. ss. 2601 et seq., the federal Truth in Lending Act, as
 134 amended, 15 U.S.C. ss. 1601 et seq., the federal Housing and
 135 Economic Recovery Act of 2008, Pub. L. No. 110-289, the federal
 136 Housing and Community Development Act of 1987, 12 U.S.C. s.
 137 1715z-20, and any regulations adopted under such acts.
 138 (6) CROSS-SELLING.—

139 (a) A mortgage lender or any other party may not require
140 an applicant for a reverse mortgage loan to purchase insurance,
141 an annuity, or similar financial product, excluding title
142 insurance or hazard, flood, or other peril insurance, as a
143 condition of obtaining a reverse mortgage loan.

144 (b) A mortgage lender or a mortgage broker arranging a
145 reverse mortgage loan may not participate in, be associated
146 with, or employ any party that participates in or is associated
147 with any other financial or insurance activity unless the
148 mortgage lender or mortgage broker demonstrates to the office
149 that the mortgage lender or other party maintains, or will
150 maintain, firewalls and other safeguards designed to ensure
151 that:

152 1. Individuals participating in the origination of the
153 reverse mortgage loan have no involvement with, or incentive to
154 provide the mortgagor with, any other financial or insurance
155 product; and

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

159 (7) COUNSELING AND CONSUMER EDUCATION.—

160 (a) Before making a reverse mortgage loan, a mortgagor
161 must receive counseling as provided in this subsection.

162 (b) The mortgage lender shall provide the mortgagor with a
163 list of at least five counseling agencies approved by the
164 department, including at least two agencies that can provide
165 counseling by telephone. The counseling agency must be an
166 independent third party that is not, directly or indirectly,

167 associated with or compensated by a party involved in:

- 168 1. Originating or servicing the reverse mortgage loan;
169 2. Funding the loan underlying the reverse mortgage loan;

170 or

- 171 3. Funding the sale of annuities, investments, long-term
172 care insurance, or any other type of financial or insurance
173 product.

174 (c) Counseling may be face to face or by telephone. The
175 information covered in the counseling session shall include:

- 176 1. Options other than a reverse mortgage loan that are
177 available to the homeowner, including other housing, social
178 service, health, and financial options.

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

- 183 3. The financial implications of entering into a reverse
184 mortgage loan.

- 185 4. A disclosure that a reverse mortgage loan may have tax
186 consequences, affect eligibility for assistance under federal
187 and state programs, and have an impact on the estate and heirs
188 of the mortgagor.

- 189 5. Any other information the commission may require by
190 rule.

191 (d) For mortgagors represented by an individual who is a
192 court-appointed guardian or possesses a durable power of
193 attorney for the borrower, such individual must complete the
194 counseling requirements.

195 (e) Upon the request of the mortgagor, other parties shall
 196 be permitted to attend the counseling with the mortgagor. This
 197 paragraph does not create an obligation or duty on the part of
 198 the mortgage lender to inform, notify, or advise any other party
 199 of the opportunity to attend the counseling.

200 (f) The mortgagor may be assessed a fee for the
 201 counseling. The fee may be financed under the loan amount as
 202 limited by the department.

203 (g) A mortgage lender may not accept a final and complete
 204 application for a reverse mortgage loan from a prospective
 205 mortgagor or assess and collect any fees from a prospective
 206 mortgagor without first receiving a certification from the
 207 mortgagor or the mortgagor's authorized representative that the
 208 mortgagor has received counseling from an approved agency.

209 1. The certification shall be signed by the mortgagor and
 210 the agency counselor and shall include the dates of the
 211 counseling and the names, addresses, and telephone numbers of
 212 the counselor and the mortgagor. An electronic facsimile copy of
 213 the counseling certification satisfies the requirements of this
 214 subparagraph.

215 2. The mortgage lender shall maintain the certification in
 216 an accurate, reproducible, and accessible format for the term of
 217 the reverse mortgage loan.

218 (8) OTHER PROVISIONS.—

219 (a) For purposes of this section, a property the legal
 220 title to which is held in the name of a trust is deemed to be
 221 owner-occupied if the occupant of the property is a beneficiary
 222 of the trust.

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

228 (9) RULES.-The commission may adopt rules necessary to
229 administer this section.

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