

SENATE, No. 1226

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Establishes pre-loan counseling requirements and borrower right of rescission for reverse mortgage loans.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning reverse mortgage loans and supplementing
2 P.L.1979, c.140 (C.46:10B-16 et seq.).
3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey*
6

7 1. As used in this act:

8 "Borrower" means any individual inquiring about or applying for
9 a reverse mortgage loan, whether or not the loan is granted, and any
10 individual who has obtained a reverse mortgage loan.

11 "Lender" means a banking institution that is authorized in the
12 State to make a reverse mortgage loan pursuant to section 3 of
13 P.L.1979, c.140 (C.46:10B-18).

14 "Reverse mortgage" means a reverse annuity mortgage or a
15 reverse direct payment mortgage as defined in section 2 of
16 P.L.1979, c.140 (C.46:10B-17).
17

18 2. Prior to accepting a final and complete application for a
19 reverse mortgage loan or assessing any fees, a lender shall:

20 a. provide the borrower with a written checklist, in 12-point
21 type or larger, advising the borrower to discuss the following issues
22 with a reverse mortgage counselor:

23 (1) how unexpected medical or other events that cause the
24 borrower to move out of the borrower's home earlier than
25 anticipated will impact the total annual cost of the reverse mortgage
26 loan;

27 (2) the extent to which the borrower's financial needs would be
28 better met by options other than a reverse mortgage loan, including
29 less costly home equity lines of credit, property tax deferral
30 programs, or governmental aid programs;

31 (3) whether the borrower intends to use the proceeds of the
32 reverse mortgage loan to purchase an annuity or other financial or
33 insurance product and the consequences of doing so;

34 (4) the effect of repayment of the reverse mortgage loan on
35 other residents of the home securing the reverse mortgage loan after
36 all borrowers have died or permanently left the home;

37 (5) the borrower's ability to finance routine or catastrophic home
38 repairs, especially if maintenance is a factor that may determine
39 when the reverse mortgage loan becomes payable;

40 (6) the impact that the reverse mortgage loan may have on the
41 borrower's tax obligations and eligibility for government assistance
42 programs, and the effect that losing equity in the home securing the
43 reverse mortgage loan will have on the borrower's estate and heirs;
44 and

45 (7) the ability of the borrower to finance alternative living
46 accommodations, such as assisted living or long-term care, after the
47 borrower's equity is depleted;

1 b. provide to the borrower the names and contact information
2 for at least five counseling agencies domiciled in New Jersey that
3 are approved by the United States Department of Housing and
4 Urban Development to engage in reverse mortgage counseling
5 pursuant to Subpart B. of 24 C.F.R. s.214, provided that the
6 counseling agencies do not receive any compensation, either
7 directly or indirectly, from the lender or from any other person or
8 entity involved in originating or servicing the reverse mortgage or
9 the sale of annuities, investments, long-term care insurance, or any
10 other type of financial or insurance product and neither make loans
11 nor refer borrowers to any person or entity that makes loans. The
12 lender shall not pay any counseling service fees to a counseling
13 agency without first informing the borrower in writing that this may
14 create a conflict of interest; and

15 c. receive a certification from the borrower or the borrower's
16 authorized representative attesting that the borrower has received
17 in-person counseling on reverse mortgage loans from a counseling
18 agency as described in subsection b. of this section that included
19 information specified in subsection a. of this section and such other
20 information as the Commissioner of Banking and Insurance may
21 designate by regulation.

22 The certification shall be signed by the borrower and the
23 counseling agency counselor, and shall include the date of the
24 counseling and the name, address, and telephone number of both the
25 counselor and the borrower. An electronic facsimile copy of the
26 certification satisfies the requirements of this subsection. The
27 lender shall maintain the certification in an accurate, reproducible,
28 and accessible format for the term of the reverse mortgage.

29 A certification shall only be valid if dated at least three business
30 days prior to the close of a reverse mortgage loan and shall expire
31 180 business days from the date it was signed.

32
33 3. If the Commissioner of Banking and Insurance or his
34 designee determines that:

35 a. a reverse mortgage loan was executed with a borrower who
36 has not received counseling pursuant to subsection c. of section 2 of
37 P.L. , c. (C.) (pending before the Legislature as this bill),
38 the reverse mortgage loan shall be rendered void and unenforceable;
39 or

40 b. a lender failed to comply with any provision of section 2 of
41 P.L. , c. (C.) (pending before the Legislature as this bill),
42 the commissioner or his designee may impose a \$1,000 civil penalty
43 upon the lender which shall be payable to the borrower.

44
45 4. a. A borrower shall not be bound for seven days after the
46 borrower's acceptance, in writing, of the lender's written commitment
47 to make the reverse mortgage loan, and shall not be required to close
48 or proceed with the loan during that time period. The lender shall

1 provide the borrower with written notice of the seven-day right of
2 rescission, which shall be on a separate sheet of paper and in at least
3 12-point type. A borrower shall not waive the provisions of this
4 section.

5 b. Nothing in this section shall prevent a borrower from
6 rescinding a reverse mortgage loan within three days of execution, as
7 provided pursuant to 12 C.F.R. s.1026.1 et seq.

8
9 5. This act shall take effect on the first day of the third month
10 next following enactment, except the commissioner may take any
11 anticipatory administrative action in advance as shall be necessary
12 for the implementation of this act.

13

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15 STATEMENT

16

17 This bill establishes pre-loan counseling requirements and a
18 borrower right of rescission in regard to reverse mortgages. A
19 reverse mortgage is a home loan that allows a homeowner to
20 convert a portion of the equity in their home into cash. Under New
21 Jersey law, borrowers of reverse mortgages must be at least 60
22 years of age or older.

23 The provisions of this bill are designed to inform and educate
24 borrowers about the benefits and consequences of reverse
25 mortgages before a loan is closed, and prevent lenders from
26 misleading borrowers or misrepresenting the reverse mortgage
27 process. Under the bill, a borrower is defined as any individual
28 inquiring about or applying for a reverse mortgage loan, whether or
29 not the loan is granted, and any individual who has obtained a
30 reverse mortgage loan.

31 Under this bill, prior to accepting a final and complete
32 application for a reverse mortgage loan or assessing any fees, a
33 lender must complete certain responsibilities. First, the lender must
34 provide the borrower with a written checklist advising the borrower
35 to discuss the following issues with a reverse mortgage counselor:

36 (1) how unexpected medical or other events that cause the
37 borrower to move out of the borrower's home earlier than
38 anticipated will impact the total annual cost of the reverse mortgage
39 loan;

40 (2) the extent to which the borrower's financial needs would be
41 better met by options other than a reverse mortgage loan, including
42 less costly home equity lines of credit, property tax deferral
43 programs, or governmental aid programs;

44 (3) whether the borrower intends to use the proceeds of the
45 reverse mortgage loan to purchase an annuity or other financial or
46 insurance product and the consequences of doing so;

1 (4) the effect of repayment of the reverse mortgage loan on
2 other residents of the home securing the reverse mortgage loan after
3 all borrowers have died or permanently left the home;

4 (5) the borrower's ability to finance routine or catastrophic home
5 repairs, especially if maintenance is a factor that may determine
6 when the reverse mortgage loan becomes payable;

7 (6) the impact that the reverse mortgage loan may have on the
8 borrower's tax obligations and eligibility for government assistance
9 programs, and the effect that losing equity in the home securing the
10 reverse mortgage loan will have on the borrower's estate and heirs;
11 and

12 (7) the ability of the borrower to finance alternative living
13 accommodations, such as assisted living or long-term care, after the
14 borrower's equity is depleted.

15 Second, the lender must provide to the borrower the names and
16 contact information for at least five counseling agencies domiciled
17 in New Jersey that are approved by the United States Department of
18 Housing and Urban Development to engage in reverse mortgage
19 counseling. Under the bill, the counseling agencies must not
20 receive any compensation, either directly or indirectly, from the
21 lender or from any other person or entity involved in originating or
22 servicing the reverse mortgage or the sale of annuities, investments,
23 long-term care insurance, or any other type of financial or insurance
24 product. In addition, the counseling agencies must neither make
25 loans nor refer borrowers to any person or entity that makes loans.
26 Furthermore, the lender must not pay any counselling service fees
27 to a counseling agency without first informing the borrower in
28 writing that this may create a conflict of interest.

29 Finally, the lender must receive a certification from the borrower
30 or the borrower's authorized representative attesting that the
31 borrower has received in-person counseling on reverse mortgage
32 loans from a counseling agency as described in the bill. The
33 counseling session must include a discussion of the issues listed on
34 the written checklist that is required under this bill to be provided
35 by the lender to the borrower. Under the bill, a certification is only
36 valid if dated at least three business days prior to the close of a
37 reverse mortgage loan and expires 180 business days from the date
38 it was signed by the counselor and borrower.

39 In addition to these responsibilities imposed upon lenders, this bill
40 establishes certain enforcement mechanisms. For example, a reverse
41 mortgage executed with a borrower who has not received pre-loan
42 counseling as outlined in the bill will render the terms of the reverse
43 mortgage void and unenforceable. Also, a failure by a lender to
44 comply with any of the bill's pre-loan counseling requirements may
45 result in a \$1,000 civil penalty payable to the borrower.

46 This bill also provides reverse mortgage loan borrowers with a
47 seven day right of rescission after the borrower's acceptance, in
48 writing, of the lender's written commitment to make the reverse

1 mortgage loan. During this time period, the borrower cannot be
2 required to close or proceed with the loan, which allows the borrower
3 more time to deliberately consider the loan contract. The lender must
4 provide the borrower with a written notice regarding the borrower's
5 seven-day right of rescission.