

# SENATE, No. 1346

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED FEBRUARY 3, 2022

**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

14

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.