



Mortgage Bankers Association
Model State Bill to Regulate Reverse Mortgage Lending
January 2010

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SECTION 1 PREAMBLE.

The purpose of this Act is to —

- A) Meet the special needs of senior homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing and subsistence needs at a time of reduced income, through the issuance of reverse mortgages to permit the conversion of a portion of accumulated home equity into liquid assets;
- B) Encourage and increase the involvement of mortgagees and participants in the mortgage markets in the making and servicing of reverse mortgages for senior homeowners;
- C) Protect senior homeowners from abuse and fraud; and
- D) Encourage the use by senior consumers interested in reverse mortgages of entities approved by the United States Department of Housing and Urban Development (HUD) for participation in the Federal Housing Administration (FHA) Home Equity Conversion Mortgage (HECM) program and alternative proprietary products.

SECTION 2 DEFINITIONS.

For purposes of this chapter,

- A) “Reverse mortgage” means a nonrecourse loan secured by real property that meets all of the following criteria:
 - 1) The loan provides lump sum, periodic cash advances, and lines of credit to a borrower based on the equity or the value in a borrower’s owner-occupied principal residence; and
 - 2) The loan requires no payment of principal or interest until the entire loan becomes due and payable.
- B) “Eligible Borrower” is any senior individual. A borrower who is incapacitated and otherwise considered an eligible borrower shall be eligible for a reverse mortgage if there is an individual who can contract for the borrower as a court appointed guardian or who possesses a durable power of attorney. In the event there is a co-borrower on the loan, the co-borrower must also be senior to be deemed an “eligible borrower.”
- C) “Borrower” means “eligible borrower;”
- D) “State” means [STATE NAME HERE];
- E) “Lender” is an entity identified on the promissory note as the “payee,” maintains its own funds, including warehouse lines, for making reverse mortgage loans, and who may or may not be approved by the U.S. Department of Housing and Urban Development (“HUD”) to participate in making reverse mortgage loans under HUD’s Home Equity Conversion Mortgage (HECM) program.

- F) "Broker" is an entity whose activity in the reverse mortgage loan process is limited to taking applications, discussing terms and rates with the borrower, and similar activity, but is not identified on the promissory note as the "payee," and does not maintain its own funds for making reverse mortgage loans.
- G) "Originate a reverse mortgage" loan means the taking of the application for a reverse mortgage subject to this [CHAPTER].
- H) "Make a reverse mortgage loan" means the funding and closing of a reverse mortgage loan subject to this [CHAPTER].
- I) "Taking an application" means the submission of a written application, for a reverse mortgage by the borrower or borrower's representative to the lender, and where the borrower or borrower's representative intends the application to be considered for approval. The taking of borrower's contact information, property address and similar information, or the mere pulling of the borrower's credit report is not deemed "taking an application."
- J) "Business day" means a day on which the offices of the lender are open to the public for carrying on substantially all of the lender's business functions.
- K) "Maximum Claim" is the maximum amount of proceeds over the life of the reverse mortgage loan the borrower is entitled to receive under the note.

SECTION 3 COVERAGE.

The provisions of this [CHAPTER] shall apply to reverse mortgage loans originated or made to eligible borrowers on the borrower's principal, 1 - 4 family dwelling, and not originated or made under HUD's HECM program, as well as reverse mortgages originated or made under HUD's HECM program.

SECTION 4 LIMITATIONS AND PARAMETERS.

A reverse mortgage loan shall comply with all of the following parameters and requirements:

- A) Prepayment, in whole or in part, shall be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this section, penalty does not include any fees, payments, or other charges that would have otherwise been due upon the reverse mortgage being due and payable.

- B) A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.
- C) If a reverse mortgage loan provides for periodic advances to a borrower, these advances shall not be reduced in amount or number based on any adjustment in the interest rate.
- D) The reverse mortgage loan shall become due and payable upon the occurrence of any one of the following events:
 - 1) The home securing the loan is sold or title to the home is otherwise transferred;
 - 2) All borrowers cease occupying the home as a principal residence, except as provided in subdivision (E);
 - 3) Any fixed maturity date agreed to by the lender and the borrower occurs; or
 - 4) An event occurs which is specified in the loan documents and which jeopardizes the lender's security.
- E) Repayment of the reverse mortgage loan shall be subject to the following additional conditions:
 - 1) Temporary absences from the home not exceeding 60 consecutive days shall not cause the mortgage to become due and payable.
 - 2) Extended absences from the home exceeding 60 consecutive days, but less than one year, shall not cause the mortgage to become due and payable if the borrower has taken prior action which secures and protects the home in a manner satisfactory to the lender, as specified in the loan documents.
- F) Nothing in this law shall require a lender to make a reverse mortgage if the lender has reason to believe that the borrower, acting on his own or acting through his guardian or individual with durable power of attorney, is unable to enter a contract for any reason, including, but not limited to, incapacity or duress. Notwithstanding the foregoing, this provision does not create any special legal duty for the lender to determine the borrower's ability to enter into a contract.

SECTION 5 FEES AND CHARGES.

- A) A reverse mortgage may include costs and fees that are charged by the lender, or the lender's designee, originator, or servicer, including costs and fees charged upon execution of the loan or execution of appreciation, on a periodic basis, or upon maturity. The borrower may also be responsible for the cost of non-compliance with the reverse mortgage contract.
- B) Fees are subject to all applicable state and federal standards.

SECTION 6 THE AGREEMENT AND NOTE; DISCLOSURE REQUIREMENTS.

A lender shall provide the borrower, anytime during the loan process but before loan closing, with a document disclosing in plain language a summary of the core terms and conditions of the loan.

- A) The core terms and conditions shall include:
 - a. Interest rate;
 - b. Whether the rate is fixed or adjustable;
 - c. If the rate is adjustable, the frequency of the rate change and the maximum amount the rate can change in any period;
 - d. The public index to which any changes in the interest rate will be tied;
 - e. The term of the loan;
 - f. The schedule of payment paid out during the term of the loan; and
 - g. The conditions under which repayment is triggered.
 - h. Lenders that meet FHA requirements for disclosure are also deemed to meet the requirements of the current statute.

- B) The lender shall comply with federal regulations.

- C) The lender's right to collect reverse mortgage loan proceeds shall be subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement.

SECTION 7 CROSS-SELLING.

- A) A lender shall not require an applicant for a reverse mortgage to purchase an insurance annuity or other similar financial product, excluding title insurance, hazard, flood or other peril insurance, as a condition of obtaining a reverse mortgage loan. A reverse mortgage lender or a broker arranging a reverse mortgage loan shall not:
 - 1) Offer an insurance, annuity or other similar financial product, excluding title insurance, hazard, flood or other peril insurance to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.
 - 2) Refer the borrower to anyone for the purchase of an insurance, annuity or other similar financial product, excluding title insurance, hazard, flood or other peril insurance, prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

- B) A mortgage originator or any other party that participates in the origination of a reverse mortgage shall comply with all applicable state and/or federal laws and regulations.

SECTION 8 COUNSELING AND CONSUMER EDUCATION.

- A) Prior to making a reverse mortgage loan, a lender shall:
- 1) Refer the prospective borrower to a HUD-approved housing counseling agency.
 - 2) Provide the borrower with a list of at least five HUD-approved counseling agencies, including at least two agencies that can provide counseling by telephone.
- B) A lender shall not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency. The certification shall be signed by the borrower and the agency counselor, and shall include the date(s) of the counseling and the names, addresses and telephone numbers of both the counselor and the borrower. An electronic facsimile copy of the housing counseling certification satisfies the requirements of this subdivision. The lender shall maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage.
- C) Counseling may be face to face, or via the telephone.
- D) The information covered in the counseling session shall include:
- 1) Options other than a reverse mortgage that are available to the homeowner, including other housing, social service, health and financial options;
 - 2) Other reverse mortgage options that are or may become available to the homeowner, such as sale-leaseback financing, deferred payment loans and property tax deferral;
 - 3) the financial implications of entering into a reverse mortgage;
 - 4) a disclosure that a reverse mortgage may have tax consequences, affect eligibility for assistance under federal and state programs, and have an impact on the estate and heirs of the homeowner;
- E) For borrowers represented by an individual who is a court appointed guardian or possesses a durable power of attorney for the borrower, that individual must complete the counseling requirements.
- F) Upon the request of the borrower, other parties shall be permitted to attend the counseling with the borrower. Nothing in this provision creates an obligation or duty on the lender to inform, notice or advise any other party of the opportunity to attend the counseling.
- G) The borrower may be assessed a fee for the counseling. The fee may be financed into the loan amount as limited by HUD.

SECTION 9 OTHER PROVISIONS.

- A) A reverse mortgage shall constitute a lien against the subject property to the extent of all advances made pursuant to the reverse mortgage and all interest accrued on these advances, and that lien shall have priority over any lien filed or recorded after recordation of a reverse mortgage loan.
- B) For the purposes of this chapter, a property shall be deemed to be owner-occupied, notwithstanding that the legal title to the property is held in the name of a trust, provided that the occupant of the property is a beneficiary of that trust.
- C) No arrangement, transfer or lien subject to this chapter shall be invalidated solely because of the failure of a lender to comply with any provision of this chapter. However, nothing in this section shall preclude the application of any other existing civil remedies provided by law.
- D) A lender who fails to make loan advances as required in the loan documents, and fails to cure an actual default after notice as specified in the loan documents, shall forfeit to the borrower treble the amount wrongfully withheld plus interest at the legal rate.
- E) Any state law or regulation applicable to loans, extensions of credit or other similar financial instruments that apply limitations, restrictions or prohibitions on certain financial concepts, including, but not limited to, shared equity lending, collateral-based lending, negative amortization, adjustable-rate interest, deferred interest, and payments calculated on an interest-only basis, however defined, that frustrate the purpose of reverse mortgages shall not apply to reverse mortgages.

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