

ASSEMBLY, No. 4753

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED MARCH 20, 2017

Sponsored by:

Assemblyman DANIEL R. BENSON

District 14 (Mercer and Middlesex)

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/1/2017)

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.

48 b. provide to the borrower the names and contact information
49 for at least five counseling agencies domiciled in New Jersey that

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

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

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

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

30

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

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

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

41

42 4. a. A borrower shall not be bound for seven days after the
43 borrower's acceptance, in writing, of the lender's written commitment
44 to make the reverse mortgage loan, and shall not be required to close
45 or proceed with the loan during that time period. The lender shall
46 provide the borrower with written notice of the seven-day right of
47 rescission, which shall be on a separate sheet of paper and in at least
48 12-point type. A borrower shall not waive the provisions of this
49 section.

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

4
5 5. This act shall take effect on the first day of the third month
6 next following enactment, except the commissioner may take any
7 anticipatory administrative action in advance as shall be necessary
8 for the implementation of this act.

9
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11 STATEMENT

12
13 This bill establishes pre-loan counseling requirements and a
14 borrower right of rescission in regard to reverse mortgages. A
15 reverse mortgage is a home loan that allows a homeowner to
16 convert a portion of the equity in their home into cash. Under New
17 Jersey law, borrowers of reverse mortgages must be at least 60
18 years of age or older.

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

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

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

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

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

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

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

1 (6) the impact that the reverse mortgage loan may have on the
2 borrower's tax obligations and eligibility for government assistance
3 programs, and the effect that losing equity in the home securing the
4 reverse mortgage loan will have on the borrower's estate and heirs;
5 and

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

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

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

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

40 This bill also provides reverse mortgage loan borrowers with a
41 seven day right of rescission after the borrower's acceptance, in
42 writing, of the lender's written commitment to make the reverse
43 mortgage loan. During this time period, the borrower cannot be
44 required to close or proceed with the loan, which allows the borrower
45 more time to deliberately consider the loan contract. The lender must
46 provide the borrower with a written notice regarding the borrower's
47 seven-day right of rescission.