

# SENATE, No. 3050

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 28, 2017

**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.

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.

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

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

## STATEMENT

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

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

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

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

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

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

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

(5) the borrower's ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine 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.