SB 1101

Department of Legislative Services

Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1101 (Senator Ready)
Finance

Reverse Mortgages - Property Tax and Insurance Payments - Notice

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This bill allows a borrower of a reverse mortgage loan to designate a person to whom the lender must send notice of any unpaid property taxes or insurance for which the borrower is responsible. The lender is required to send a copy of any notice sent to the borrower regarding unpaid property taxes or insurance to the designated person. After a lender makes a payment for property taxes or insurance, the lender must (1) notify the borrower (and any person designated by the borrower under the bill) by first-class certified mail, return receipt requested, within 30 days after the payment is made and (2) provide instructions to the borrower on how the borrower may arrange for automatic withdrawal payments for property taxes and insurance.

A lender or arranger of financing for a reverse mortgage loan *not* insured under federal law that violates the Reverse Mortgage Loans Act engages in an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA) and is subject to MCPA's civil penalty provisions. A lender or arranger of financing for a reverse mortgage loan insured under federal law is subject to federal penalties.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. If the Consumer Protection Division of the Office of the Attorney General receives fewer than 50 complaints per year stemming from the bill, the additional workload can be handled with existing resources.

Local Effect: The bill's imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Minimal.

Analysis

Current Law:

Reverse Mortgage Loans

A "reverse mortgage loan" is a nonrecourse loan that (1) is secured by the borrower's principal dwelling; (2) provides the borrower with purchase money proceeds, a lump sum payment, periodic cash advances, a line of credit, or any combination of those payment plans based on the equity in or value of the borrower's principal dwelling; and (3) requires no payment of principal or interest until the full loan becomes due and payable.

Unfair or Deceptive Trade Practices under Maryland Consumer Protection Act

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation.

Background:

Reverse Mortgages

According to the Consumer Financial Protection Bureau, a reverse mortgage is a special type of home equity loan sold to homeowners age 62 and older. The loan allows homeowners to access a portion of their home equity as cash. In a reverse mortgage, interest is added to the loan balance each month, and the balance grows. The loan must be repaid when the last borrower, co-borrower, or eligible spouse sells the home, moves out of the home, or dies.

The Federal Trade Commission (FTC) notes that there are three kinds of reverse mortgages: (1) single purpose reverse mortgages (offered by some state and local government agencies); (2) proprietary reverse mortgages (private loans); and (3) federally insured reverse mortgages, also known as Home Equity Conversion Mortgages (HECMs).

FTC further notes that, in a reverse mortgage, the homeowner keeps the title to the home and, therefore, is responsible for property taxes, insurance, utilities, fuel, maintenance, and other expenses. If the homeowner does not pay property taxes, maintain homeowner's insurance, or maintain the home, a lender might require the homeowner to repay the loan. As a result, a lender may require a "set-aside" amount to pay taxes and insurance during the lifetime of the loan. The "set-aside" reduces the amount of funds a homeowner can get in the form of payments.

2016 Analysis of Reverse Mortgage Industry in Maryland by the Office of the Commissioner of Financial Regulation

In 2016, the Office of the Commissioner of Financial Regulation (OFR) conducted an analysis of provisions of Maryland law covering reverse mortgages. OFR notes in the analysis that "reverse mortgage" is the common term used to describe multiple financial products, while HECM is the predominant type of reverse mortgage product. Since 2010, all mortgages originated in Maryland must comply with HECM requirements.

From 2005 to 2014, OFR found that HECMs represented a little over 1% of the mortgage market in Maryland. Moreover, during the height of HECM originations in 2008 and 2009, HECMs represented 3% and 2% of mortgage originations in the State, respectively.

OFR notes that, in the years following the enactment of Chapters 622 and 623 of 2010 (the Reverse Mortgage Loans Act), a large amount of work has been done by the Federal Housing Administration (FHA) to change HECM program requirements in order to address rising property charge defaults (*i.e.*, loans in default due to failure to pay property charges such as property taxes or homeowner's insurance). FHA has acted to reduce the number of foreclosures because a significant increase in foreclosures could imperil FHA's ability to provide access to credit for underserved populations in the future. (In the event of a foreclosure, FHA pays the lender the difference between the reverse mortgage loan and the foreclosure sale price.)

According to OFR, the HECM program is FHA's reverse mortgage program which enables seniors who have equity in their homes to withdraw a portion of the accumulated equity. The intent of the HECM program is to ease the financial burden on elderly homeowners facing increased health, housing, and subsistence costs at a time of reduced income. The HECM program began in 1989 as a small demonstration program and became permanent in 1998. Since then, FHA's share of the reverse mortgage market has grown steadily and the market share attributable to non-HECM reverse mortgage loans has dropped significantly. Today, the vast majority of new reverse mortgage loans are HECM loans.

Generally, FHA offers two types of HECM loans: adjustable interest rate HECMs and fixed interest rate HECMs.

- For adjustable rate HECMs, borrowers can choose from multiple options, including a line of credit, monthly "tenure" whereby borrowers receive monthly payments for as long as they live in their home, or monthly "term" whereby borrowers receive monthly payments for a fixed number of years.
- Fixed interest rate HECMs, which have only been offered by FHA since 2008, are generally considered to be a much riskier product than the traditional HECM because borrowers are required to take all of their available proceeds as a lump sum at closing.

FHA regulations require the HECM mortgage instrument to contain certain requirements, including that the borrower maintain adequate hazard insurance; keep the property in good repair; and pay taxes, hazard insurance premiums, ground rents, and assessments (property charges) in a timely manner. The HECM mortgage instrument is required to specify that the balance becomes due and payable in full if certain events occur, including:

- the property ceases to be the principal residence of all of the borrowers;
- the borrowers fail to occupy the property for a period of longer than 12 consecutive months because of physical or mental illness; or
- the borrowers fail to comply with the requirements specified in the mortgage.

After the balance becomes due and payable, the mortgage servicer must then request permission from FHA to proceed to the default phase.

OFR notes that, according to data obtained from the U.S. Department of Housing and Urban Development, 3,392 HECM loans originated in Maryland between May 2013 and April 2016 by 42 lenders, 12 of which are responsible for approximately 56% of HECMs during that time period. Nine of the top 10 HECM originators hold a mortgage lender license with OFR.

In addition, the Conference of State Bank Supervisors provided OFR with a list of all mortgage companies licensed by OFR that also report conducting reverse mortgage activity in Maryland. In total, 199 companies were on the list. Between July 2013 and the time of the report (November 2016), OFR reported receiving 25 consumer complaints regarding reverse mortgages.

OFR advises that HECM guidelines require a financial assessment of the borrower, in part to determine if the mortgagor has the capacity to meet the obligations of the loan, including paying property taxes and insurance. If the lender determines that the borrower does not have the capacity or the willingness to meet his or her obligations, then the lender must either establish a "Life Expectancy Set Aside" for the payment of property taxes and insurance premiums or require the borrower to allow the lender to pay such obligations out of the mortgage proceeds by withholding funds from the monthly disbursement or by charging such funds to the line of credit. A borrower can also elect at any time to have funds set aside, even if he or she is not required to do so by the set-aside analysis.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Insurance Administration; Consumer Financial Protection Bureau; Federal Trade Commission; Department of Legislative Services

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mm/kdm

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