HB 1196

Department of Legislative Services

Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1196 (Delegate Adams)
Economic Matters

Commercial Law - Credit Regulation - Reverse Mortgage Loans Act - Revisions

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This bill restructures and expands the Reverse Mortgage Loans Act (RMLA). Among other things, the bill requires a reverse mortgage borrower to be at least 60 years old and to occupy (as a principal residence) the dwelling that secures the reverse mortgage loan. The bill also modifies lending requirements for reverse mortgages (*e.g.*, by specifying additional disclosures and notifications that must be provided to the borrower, requiring the lender to assess a borrower's ability to repay, specifying permissible fees that may be charged by a lender, and other related provisions). The definition of "reverse mortgage loan" is expanded to clarify the conditions under which the loan must be repaid.

Fiscal Summary

State Effect: The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. The Office of the Attorney General, Consumer Protection Division, and the Office of the Commissioner of Financial Regulation can handle the bill's requirements 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: Potential meaningful.

Analysis

Bill Summary:

Definition of Reverse Mortgage

The expanded definition specifies that a reverse mortgage requires no payment of principal or interest until:

- the last surviving borrower dies;
- the borrower's principal residence is sold or otherwise transferred;
- the dwelling that secures the loan is no longer the borrower's principal residence;
- the borrower fails to occupy the dwelling within or during specified timeframes; or
- the borrower defaults under the terms of the loan.

For the purpose of determining a borrower's eligibility and benefits for a State means-tested program, as defined by the bill, payments from a reverse mortgage are treated as proceeds from a loan and not as income. Similarly, undisbursed funds are treated as equity and not as proceeds from a loan.

Disclosure Requirements

The bill establishes several new disclosure and notification requirements for reverse mortgage lenders. For example, at the time the lender or arranger of financing provides an application for a reverse mortgage loan to a prospective borrower, the lender (or arranger of financing) must provide a disclosure that explains any adjustable interest rate feature of the loan, including (1) the circumstances under which the interest rate may increase; (2) any limitations on the amount that the interest rate may increase; and (3) the effect of an increase in the interest rate. The lender or arranger of financing must also provide specified contact information for at least five counseling agencies. Additional disclosures, generally related to the borrower's liability under the reverse mortgage, are required (1) at least 10 days before the closing day for the reverse mortgage and (2) annually during the term of the reverse mortgage.

Before signing a reverse mortgage loan application, the prospective borrower must meet with a counseling agency and discuss each item in a checklist required under current law. The counseling agency must provide additional disclosures related to the tax and inheritance implications of a reverse mortgage.

After accepting, in writing, a lender's written commitment to make a reverse mortgage loan, the borrower may not be bound to the loan for at least seven days. A borrower may not waive this provision.

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 those loan documents, forfeits to the borrower three times the amount wrongfully withheld, plus interest at the legal rate.

Permissible Fees

A lender (or an arranger) of financing is authorized to collect the actual expenses that the lender (or arranger of financing) incurs in originating and closing the reverse mortgage loan, including (1) a fee for the arranger of financing if the arranger of financing and the lender do not share any pecuniary interest and (2) the actual amount that the lender paid for specified items.

Ability to Repay

Before loan approval, the lender must assess the financial capacity of the borrower to comply with the terms of the reverse mortgage loan and evaluate whether the loan is a sustainable solution for the borrower. The financial assessment must consider certain factors (such as the borrower's credit history). In addition, the financial assessment must meet specified federal requirements (or lender or investor financial assessment requirements that are reasonably similar to the federal requirements).

Initiation of Foreclosure Proceedings

In the event of a loan default, the bill also specifies certain procedures that must be followed before foreclosure proceedings can be initiated. Specifically, before a person initiates foreclosure proceedings on a reverse mortgage loan, the person must (1) send the borrower written notice that states the grounds for default and foreclosure and (2) provide the borrower at least 30 days to cure the borrower's default.

Reverse Mortgage Lien

The bill establishes that a reverse mortgage constitutes a lien against the subject property to the extent of all advances made under the loan documents (regardless of the purpose of the advance). The lien (and all interest accrued on advances) must have priority over any lien filed or recorded after recordation of a reverse mortgage.

Invalidation of Lien

An arrangement, transfer, or lien subject to the bill's requirements may not be invalidated solely because of the failure of a lender comply with a provision of RMLA. However, this requirement does not preclude the application of any other civil remedies provided by law.

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

A lender that offers or makes a reverse mortgage loan secured by a dwelling in the State must conform to federal regulations governing federally insured Home Equity Conversion Mortgages (HECM loans) (HECM loans are federally insured reverse mortgages). RMLA applies to proprietary loans, which are not subject to federal regulation, as well as to federally insured HECM loans. However, a proprietary reverse mortgage loan is not subject to specified federal regulations that:

- limit origination fees;
- impose maximum claim amounts or other loan limit restrictions; or
- require specified insurance for the loan.

The bill repeals the provisions related to the applicability of federal regulations, but incorporates many of the federal regulatory provisions within RMLA.

Sales of Financial and Insurance Products – Prohibitions

A lender is prohibited from requiring a borrower to purchase an annuity, a long-term care policy, or other financial or insurance product as a condition of receiving a reverse mortgage loan. A lender is also prohibited from referring a borrower to any person for the purchase of an annuity or any other financial product before the later of the closing of the reverse mortgage loan or the expiration of the borrower's right to rescind the loan agreement. However, a lender is not prohibited from offering to a borrower, or referring a borrower to a person for the purchase of, title insurance, hazard, flood, or other peril insurance, or other similar products that are customary under a reverse mortgage loan.

Required Disclosures and Counseling

At the time a lender receives an application for a reverse mortgage loan, the lender must provide the prospective borrower with a checklist advising the borrower to discuss certain issues that may affect a borrower's ability to manage a reverse mortgage loan with a housing counselor.

Penalties

With respect to a federally insured HECM loan, if the lender violates any provision of RMLA, the lender is subject to the penalties applicable under federal law. With respect to a proprietary loan, if the lender violates RMLA's provisions, the lender is subject to the enforcement and penalty provisions of the Maryland Consumer Protection Act, excluding that Act's criminal penalty provisions.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (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, abusive, 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 $10,000 for each violation and up to $25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, unless otherwise specified, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

Small Business Effect: Any small business reverse mortgage lenders in the State are affected by the bill, which makes significant changes to the State's reverse mortgage lending standards and requirements. However, the Department of Legislative Services advises there is insufficient data to determine exactly how many small business lenders in the State may be affected by the bill's changes and how significantly the bill may affect the operations of such businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 457 (Senator Feldman) - Finance.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

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