HB 799

Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 799 (Delegate Kramer, *et al.*)
Economic Matters Finance

Reverse Mortgage Homeowners Protection Act

This bill establishes various provisions governing reverse mortgage loans.

The bill has prospective application and applies only to reverse mortgage loans applied for on or after the bill's October 1, 2010 effective date.

Fiscal Summary

State Effect: 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. Otherwise, the bill does not materially affect State finances.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill defines "reverse mortgage loan" as 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.

The bill requires a lender that offers or makes a reverse mortgage loan secured by a dwelling in the State to conform to federal regulations governing federally insured Home Equity Conversion Mortgages (HECM loans) (HECM loans are federally insured reverse mortgages). The bill 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.

Sales of Financial and Insurance Products – Prohibitions

The bill prohibits a lender 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. The bill further prohibits a lender 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 the bill, the lender is subject to the penalties applicable under federal law. With respect to a proprietary loan, if the lender violates the bill'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.

Current Law: Maryland does not have any consumer protections specifically governing the sale of reverse mortgages. Chapters 7 and 8 of 2008 required that lenders verify borrowers' abilities to repay mortgage loans based on debt-to-income ratios and gross monthly income. However, for purposes of the "ability to repay" provisions, reverse mortgages are excluded from the definition of a mortgage loan. The "ability to repay" provisions were added to the Commercial Law Article to address the widespread underwriting problems that resulted in large numbers of borrowers receiving loans they could not afford.

Background: The bill is intended to make proprietary reverse mortgages subject to the same regulations that apply to federally insured HECM loans. The bill is also intended to strengthen current regulations by regulating the sales and marketing of annuities and other financial products in connection with a reverse mortgage (with respect to both proprietary and federally insured HECM loans).

According to a 2005 report by the National Council on Aging, older Americans own more than $2 trillion in untapped home equity. By allowing seniors to take advantage of built-up home equity, reverse mortgages provide borrowers with the cash they need to pay for long-term care and other expenses, while allowing them to continue living in their own homes.

A reverse mortgage is a nonrecourse loan secured by the borrower's primary residence that provides cash advances to the homeowner. The amount of money available to the borrower depends upon the appraised value of the home, its location, and whether any outstanding liens or mortgages exist on the property. Other considerations include the age of the borrower, and the interest rate of the loan tied to the U.S. Treasury one-year T-Bill or the London Interbank Offered Rate index.

The loans are repaid in a lump sum when the homeowner dies, moves, or decides to sell the residence. The borrower has the option of receiving the loan proceeds as a lump sum, in monthly payments, or as a line of credit. The lender recovers principal and accrued interest when the residence is sold. After the loan has been repaid with proceeds from the sale, any remaining equity is distributed to the borrower or the borrower's estate.

Two basic loan options exist – private reverse mortgages without federal mortgage insurance and the U.S. Department of Housing and Urban Development's (HUD) federally insured HECM program. HUD's reverse mortgage program is authorized by Section 255 of the National Housing Act (12 U.S.C. § 1715z-20) which allows the Federal Housing Administration to insure home equity conversion mortgages for elderly homeowners. HECM accounts for approximately 90% of the reverse mortgage market and has insured over 390,000 loans since its inception in 1989.

California's Reverse Mortgage Consumer Protection Laws

California has numerous consumer protection laws governing reverse mortgages, including 2006 legislation that influenced the federal Housing and Economic Recovery Act of 2008. Although the federally insured HECM program comprises 90% of the reverse mortgage market, California enacted additional legislation to combat complaints of fraud and predatory lending taking place amongst private lenders of reverse mortgages.

California Civil Code § 1923.5 requires a conspicuous, plain-language statement warning borrowers about the complex nature of reverse mortgages. On September 5, 2006, California enacted Chapter 202, which makes substantial changes to the state's reverse mortgage regulations. First, Chapter 202 prohibits reverse mortgage lenders and originators from requiring the purchase of an annuity as a condition to obtaining a reverse mortgage. Additionally, lenders may not refer borrowers to *anyone* for the purchase of annuities prior to closing a reverse mortgage.

Chapter 202 also makes HUD-approved counseling mandatory for borrowers before they obtain reverse mortgages from private lenders. Lenders must provide borrowers with a list of at least five HUD-approved counseling agencies. Upon completing a counseling session, a borrower must provide the lender with certification of the counseling session prior to the closing of the loan. Chapter 202 further amends California Civil Code § 1632 by requiring lenders to translate reverse mortgage contracts if primarily negotiated in Spanish, Chinese, Tagalog, Vietnamese, or Korean.

Additional Information

Prior Introductions: None.

Cross File: SB 878 (Senator Kramer, *et al.*) - Finance.

Information Source(s): U.S. Department of Housing and Urban Development; National Council on Aging; Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Office of the Attorney General (Consumer Protection Division); Department of Housing and Community Development; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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