Department of Legislative Services

Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 855 (Senator Kelley, *et al.*)
Finance

Commercial Law - Reverse Mortgages - Escrow Accounts

This bill requires a reverse mortgage lender to establish an escrow account for the payment of property taxes or insurance that may be required by a lender or an arranger of financing. The escrow account must conform to requirements in the Commercial Law Article and allow for monthly collection and deposit of funds. 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: Potential meaningful.

Analysis

Current Law: An "escrow account" is an expense or escrow account which tends to protect the security of a loan by the accumulation of funds for the payment of taxes, insurance premiums, or other expenses.

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.

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:

Escrow Accounts

According to the Federal Trade Commission (FTC), an escrow account is a fund held by a loan servicer that the loan holder pays into for property taxes and homeowner's insurance. The escrow payment typically is part of a monthly mortgage payment. The servicer uses the escrow account to pay taxes and insurance as they become due during the year. If a mortgagor does not have an escrow account, then he or she must independently make those payments.

Federal law requires a mortgage servicer that administers an escrow account to make escrow payments for taxes, insurance, and any other escrowed items on time. Within

45 days of establishing the account, the servicer must give the "mortgagor" (*i.e.*, the homeowner) a statement that clearly itemizes the estimated taxes, insurance premiums, and other anticipated amounts to be paid over the next 12 months, and the expected dates and totals of those payments.

The mortgage servicer also is required to give the mortgagor a free annual statement that details the activity of the escrow account showing, for example, the account balance and reflecting payments for property taxes, homeowner's insurance, and other escrowed items.

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.

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, keep 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.

Small Business Effect: Reverse mortgage lenders that are small businesses may incur additional costs under the bill to create new forms for escrow accounts and set up payment mechanisms for property taxes in various counties as well as for numerous insurance companies.

Additional Comments: The Department of Labor, Licensing, and Regulation (DLLR) advises that the Federal Housing Administration's guidelines for the federal government's insured reverse mortgage program, HECM, requires 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 obligations, then the lender must either establish a "Life Expectancy Set Aside" for payment of property taxes and insurance premiums or require the borrower to allow the lender to pay such obligations out of mortgage proceeds by withholding funds from the monthly disbursement or by charging such funds to the line of credit.

DLLR advises that it is unclear whether the requirement under the bill for a reverse mortgage escrow account is satisfied by a Life Expectancy Set Aside or withholding provision under federal law.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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