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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3627

02/20/2020 Authored by Kotyza-Witthuhn, Davids, Edelson, Haley and Howard
The bill was read for the first time and referred to the Committee on Commerce
02/27/2020 Adoption of Report: Amended and re-referred to the Judiciary Finance and Civil Law Division
03/12/2020 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time

1.1 A bill for an act
1.2 relating to commerce; requiring notices for reverse mortgage loans; amending
1.3 Minnesota Statutes 2018, section 47.58, subdivisions 1, 8, by adding subdivisions.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2018, section 47.58, subdivision 1, is amended to read:

1.6 Subdivision 1. Definitions. For the purposes of this section, the terms defined in this
1.7 subdivision have the meanings given them.

1.8 (a) "Reverse mortgage loan" means a loan:

1.9 (1) Made to a borrower wherein the committed principal amount is paid to the borrower
1.10 in equal or unequal installments over a period of months or years, interest is assessed, and
1.11 authorized closing costs are incurred as specified in the loan agreement;

1.12 (2) Which is secured by a mortgage on residential property owned solely by the borrower;
1.13 and

1.14 (3) Which is due upon the death of the last surviving borrower, or upon the borrower
1.15 terminating use of the property as principal residence so as to disqualify the property from
1.16 the homestead credit refund given in chapter 290A.

1.17 (b) "Lender" means any bank subject to chapter 48, credit union subject to chapter 52,
1.18 savings bank organized and operated pursuant to chapter 50, savings association subject to
1.19 chapter 51A, any residential mortgage originator subject to chapter 58, or any insurance
1.20 company as defined in section 60A.02, subdivision 4. "Lender" also includes any federally
1.21 chartered bank or savings association supervised by the comptroller of the currency or
1.22 federally chartered savings association supervised by the Federal Home Loan Bank Board

2.1 ~~or~~ federally chartered credit union supervised by the National Credit Union Administration,  
2.2 to the extent permitted by federal law.

2.3 (c) "Borrower" includes any natural person holding an interest in severalty or as joint  
2.4 tenant or tenant-in-common in the property securing a reverse mortgage loan.

2.5 (d) "Outstanding loan balance" means the current net amount of money owed by the  
2.6 borrower to the lender whether or not that sum is suspended pursuant to the terms of the  
2.7 reverse mortgage loan agreement or is immediately due and payable. The outstanding loan  
2.8 balance is calculated by adding the current totals of the items described in clauses (1) to (5)  
2.9 and subtracting the current totals of the item described in clause (6):

2.10 (1) The sum of all payments made by the lender which are necessary to clear the property  
2.11 securing the loan of any outstanding mortgage encumbrance or mechanics or material  
2.12 supplier's lien.

2.13 (2) The total disbursements made by the lender to date pursuant to the loan agreement  
2.14 as formulated in accordance with subdivision 3.

2.15 (3) All taxes, assessments, insurance premiums and other similar charges paid to date  
2.16 by the lender pursuant to subdivision 6, which charges were not reimbursed by the borrower  
2.17 within 60 days.

2.18 (4) All actual closing costs which the borrower has deferred, if a deferral provision is  
2.19 contained in the loan agreement as authorized by subdivision 7.

2.20 (5) The total accrued interest to date, as authorized by subdivision 5.

2.21 (6) All payments made by the borrower pursuant to subdivision 4.

2.22 (e) "Actual closing costs" mean reasonable charges or sums ordinarily paid at the time  
2.23 of closing for the following, whether or not retained by the lender:

2.24 (1) Any insurance premiums on policies covering the mortgaged property including but  
2.25 not limited to premiums for title insurance, fire and extended coverage insurance, flood  
2.26 insurance, and private mortgage insurance.

2.27 (2) Abstracting, title examination and search, and examination of public records related  
2.28 to the mortgaged property.

2.29 (3) The preparation and recording of any or all documents required by law or custom  
2.30 for closing a reverse mortgage loan agreement.

2.31 (4) Appraisal and survey of real property securing a reverse mortgage loan.

3.1 (5) A single service charge, which service charge shall include any consideration, not  
3.2 otherwise specified in this section as an "actual closing cost," paid by the borrower to the  
3.3 lender for or in relation to the acquisition, making, refinancing or modification of a reverse  
3.4 mortgage loan, and shall also include any consideration received by the lender for making  
3.5 a commitment for a reverse mortgage loan, whether or not an actual loan follows the  
3.6 commitment. The service charge shall not exceed one percent of the bona fide committed  
3.7 principal amount of the reverse mortgage loan.

3.8 (6) Charges and fees necessary for or related to the transfer of real property securing a  
3.9 reverse mortgage loan or the closing of a reverse mortgage loan agreement paid by the  
3.10 borrower and received by any party other than the lender.

3.11 (f) "Third-party designee" means an individual designated in the reverse mortgage loan  
3.12 agreement by the borrower to receive the communications described in subdivision 6a from  
3.13 a servicer.

3.14 (g) "Reverse mortgage loan servicer" or "servicer" means a person who performs servicing  
3.15 activities for a reverse mortgage loan.

3.16 (h) "Servicing activities" means disbursing loan proceeds; monitoring payments due;  
3.17 communicating with and responding to a borrower, a borrower's heirs, and a borrower's  
3.18 family members; determining whether a borrower continues to occupy a property as a  
3.19 principal residence; managing delinquencies and defaults; initiating, assisting, or facilitating  
3.20 a foreclosure; or performing any other service required by the lender or by the terms of the  
3.21 reverse mortgage loan agreement.

3.22 **EFFECTIVE DATE.** This section is effective August 1, 2020, and applies to reverse  
3.23 mortgage loans originated on or after that date.

3.24 Sec. 2. Minnesota Statutes 2018, section 47.58, is amended by adding a subdivision to  
3.25 read:

3.26 Subd. 6a. **Communication with third-party designee.** (a) The reverse mortgage loan  
3.27 servicer must, by first class mail, send copies of unanswered written communications and  
3.28 all subsequent written communications from the servicer to the borrower regarding  
3.29 delinquencies, defaults, and unfulfilled obligations under the loan agreement to a third-party  
3.30 designee at the address listed on the authorization form described in subdivision 8.

3.31 (b) The servicer may:

3.32 (1) mail the communications required under paragraph (a) to the third-party designee at  
3.33 the same time the communications are mailed to the borrower; or

4.1 (2) communicate with the third-party designee regarding the borrower's failure to respond  
4.2 to the communications described in paragraph (a) by e-mail at the e-mail address listed on  
4.3 the authorization form described in subdivision 8.

4.4 (c) The authorization form described in subdivision 8 shall be considered sufficient  
4.5 authorization for the servicer to communicate with a third-party designee who initiates  
4.6 communication with the servicer via phone, e-mail, or United States mail.

4.7 (d) Compliance with this subdivision may be established by recording with the county  
4.8 recorder or registrar of titles, as appropriate, an affidavit that includes the reverse mortgage  
4.9 document recording number and a statement affirming that the actions required by paragraph  
4.10 (a) have been taken, executed by a person having knowledge of the facts. The affidavit is  
4.11 prima facie evidence of the facts stated in the affidavit and recordation is prima facie evidence  
4.12 of compliance with this subdivision.

4.13 (e) A borrower has a cause of action under section 582.043, subdivision 7, if the servicer  
4.14 fails to comply with paragraph (a), provided that the action is taken prior to the expiration  
4.15 of the redemption period specified under section 580.23. There is a rebuttable presumption  
4.16 that the servicer failed to communicate with a third-party designee absent a recorded affidavit,  
4.17 as described in paragraph (d).

4.18 **EFFECTIVE DATE.** This section is effective August 1, 2020, for reverse mortgage  
4.19 loans originated on or after that date.

4.20 Sec. 3. Minnesota Statutes 2018, section 47.58, is amended by adding a subdivision to  
4.21 read:

4.22 Subd. 6b. **Communication with independent counseling agency.** (a) If a reverse  
4.23 mortgage loan servicer must take the actions required under subdivision 6a, paragraph (a),  
4.24 the servicer must mail a copy of unanswered written communications and copies of  
4.25 subsequent written communications from the servicer regarding delinquencies, defaults,  
4.26 and unfulfilled obligations under a reverse mortgage loan agreement to the independent  
4.27 counseling agency identified in the loan agreement.

4.28 (b) The servicer may mail the communications described in paragraph (a) to the  
4.29 independent counseling agency at the same time the communications are mailed to the  
4.30 borrower and third-party designee.

4.31 **EFFECTIVE DATE.** This section is effective August 1, 2020, for reverse mortgage  
4.32 loans originated on or after that date.

5.1 Sec. 4. Minnesota Statutes 2018, section 47.58, subdivision 8, is amended to read:

5.2 Subd. 8. **Counseling; requirement; penalty.** Prior to accepting a final and complete  
5.3 application for a reverse mortgage loan or assessing any fees, a lender must:

5.4 (a) refer the prospective borrower to an independent housing counseling agency for  
5.5 reverse mortgage counseling. The lender shall provide the prospective borrower with a list  
5.6 of at least three independent housing counseling agencies. The lender shall positively promote  
5.7 the benefits of reverse mortgage counseling to the potential borrower; and

5.8 (b) receive a certification from the applicant or the applicant's authorized representative  
5.9 that the applicant has received counseling as defined in this subdivision from an independent  
5.10 housing counseling agency. The certification must be signed by the applicant and the  
5.11 counselor from the independent agency and must include the date of the counseling, and  
5.12 the name, address, and telephone number of both the counselor from the independent agency  
5.13 and the applicant. The lender shall maintain the certification in an accurate, reproducible,  
5.14 and accessible format for the term of the reverse mortgage. A failure by the lender to comply  
5.15 with this subdivision results in a \$1,000 civil penalty payable to the borrower.

5.16 For the purposes of this subdivision:

5.17 (1) "independent counseling agency" means an agency approved by the United States  
5.18 Department of Housing and Urban Development, domiciled in Minnesota, to provide loan  
5.19 counseling that has no business relationship with the lender and, except for an authorized  
5.20 foreclosure prevention counseling agency, as defined in section 580.021, subdivision 2,  
5.21 neither makes loans nor refers borrowers to any person or entity that makes loans; and

5.22 (2) "counseling" means that during a session, which must be no less than 60 minutes,  
5.23 the following services are provided to the borrower:

5.24 (i) a review of the advantages and disadvantages of a reverse mortgage loan;

5.25 (ii) a discussion of the borrower's finances, assets, liabilities, expenses, and income needs  
5.26 and a review of options other than a reverse mortgage loan that are available to the borrower,  
5.27 including other housing, social services, health, and financial options;

5.28 (iii) a review of other home equity conversion or other loan options that are or may  
5.29 become available to the borrower;

5.30 (iv) an explanation of the financial implication of entering into a reverse mortgage loan,  
5.31 including the costs of the loan;

6.1 (v) an explanation that a reverse mortgage loan may have tax consequences, affect  
6.2 eligibility for assistance under federal and state programs, and have an impact on the estate  
6.3 and heirs of the borrower;

6.4 (vi) an explanation of the lending process;

6.5 (vii) an opportunity for the borrower to ask questions of the counselor;

6.6 (viii) an explanation that:

6.7 (A) the lender may not condition a reverse mortgage loan on the purchase of an annuity,  
6.8 investment, life insurance, or long-term care insurance product; and

6.9 (B) a reverse mortgage loan cannot obligate the borrower to purchase an annuity,  
6.10 investment, life insurance, or long-term care insurance product; ~~and~~

6.11 (ix) notification to the borrower that, following the receipt of a written commitment to  
6.12 make a reverse mortgage loan and prior to the expiration of the seven-day cooling off period  
6.13 provided under subdivision 10, the borrower may seek additional information and an analysis  
6.14 of the commitment from the counselor; and

6.15 (x) an explanation of the borrower's right, before executing the reverse mortgage loan  
6.16 agreement, to name a third-party designee to receive communications regarding  
6.17 delinquencies, defaults, and unfulfilled obligations under the loan agreement. The counselor  
6.18 must provide the borrower with the following blank form, which must be in at least 14-point  
6.19 type, for the borrower to complete if desired and present to the lender when entering into  
6.20 the loan agreement:

6.21 **Authorization Form**

6.22 I, (name of borrower), authorize my lender or servicer to send copies of any written  
6.23 communications from the servicer regarding missed payments or other unfulfilled loan  
6.24 obligations that could result in foreclosure, as provided under Minnesota Statutes, section  
6.25 47.58, subdivisions 6a and 6b, to:

6.26 1. the individual designated below, and

6.27 2. the independent counseling agency providing me with the reverse mortgage loan  
6.28 counseling required under Minnesota Statutes, section 47.58, subdivision 8.

6.29 I further authorize the person designated below to communicate with my lender or  
6.30 servicer.

6.31 Designee Contact Information:

7.1 Name:.....

7.2 Address:.....

7.3 Telephone Number(s):.....

7.4 E-mail Address:.....

7.5 Name of Borrower (print name):.....

7.6 Signature of Borrower:.....

7.7 Date:.....

7.8 **EFFECTIVE DATE.** This section is effective August 1, 2020, for all reverse mortgage  
7.9 loans originated on or after that date.