

A bill for an act

relating to reverse mortgages; eliminating the requirement that a reverse mortgage becomes due when committed principal has been fully paid; mandating counseling by an independent housing agency; regulating lender default; imposing liability on a subsequent purchaser of a reverse mortgage; providing for a right of rescission; defining suitability; amending Minnesota Statutes 2008, section 47.58, subdivisions 1, 3, 8, by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapters 58; 60K.

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

Section 1. Minnesota Statutes 2008, section 47.58, subdivision 1, is amended to read:

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

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

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

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

(3) Which is due ~~when the committed principal amount has been fully paid to the borrower, or~~ upon sale of the property securing the loan, or upon the death of the last surviving borrower, or upon the borrower terminating use of the property as principal residence so as to disqualify the property from the homestead credit given in chapter 290A.

(b) "Lender" means any bank subject to chapter 48, credit union subject to chapter 52, savings bank organized and operated pursuant to chapter 50, savings association subject to chapter 51A, or any insurance company as defined in section 60A.02, subdivision 4. "Lender" also includes any federally chartered bank supervised by the

comptroller of the currency or federally chartered savings association supervised by the Federal Home Loan Bank Board or federally chartered credit union supervised by the National Credit Union Administration, to the extent permitted by federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A single service charge, which service charge shall include any consideration, not otherwise specified in this section as an "actual closing cost," paid by the borrower to the lender for or in relation to the acquisition, making, refinancing or modification of a reverse mortgage loan, and shall also include any consideration received by the lender

for making a commitment for a reverse mortgage loan, whether or not an actual loan follows the commitment. The service charge shall not exceed one percent of the bona fide committed principal amount of the reverse mortgage loan.

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

Sec. 2. Minnesota Statutes 2008, section 47.58, subdivision 3, is amended to read:

Subd. 3. **Payment; repayment; amount.** The committed principal amount of a reverse mortgage loan shall be paid to the borrower over the period of months or years as specified in the loan agreement. The borrower and lender may, by written agreement, amend the loan agreement from time to time. Pursuant to the terms of the contract the borrower shall make repayment to the lender:

~~(a) upon payment to the borrower of the final installment unless, by written agreement between the borrower and lender whereunder the borrower agrees to periodically pay the lender interest accruing on the outstanding loan balance, repayment of the outstanding loan balance is postponed until default in payment of interest or until the occurrence of any of the events specified in clauses (b) (1) to (e) (4);~~

~~(b) (1)~~ upon sale of the property securing the loan;

~~(c) (2)~~ upon the death of the last surviving borrower;

~~(d) (3)~~ upon the borrower terminating use of the property as principal residence so as to disqualify the property from homestead classification under section 273.13; or

~~(e) (4)~~ upon renegotiation of the terms of the reverse mortgage loan agreement, unless the parties agree in writing to postpone repayment.

Except as otherwise provided in this subdivision, the outstanding loan balance as projected by the lender to the anticipated time of payment to the borrower of the final installment of committed principal shall not exceed 80 percent of the appraised value of the property at inception of the loan. If upon reappraisal of the property made at any time during the term of the loan, the projected outstanding loan balance does not exceed 70 percent of the reappraised value of the property, the schedule of the lender's installment payments may be extended and the amount of the committed principal amount increased, provided the revised outstanding loan balance at payment of the lender's final installment of committed principal does not exceed 80 percent of the reappraised value of the property.

Sec. 3. Minnesota Statutes 2008, section 47.58, subdivision 8, is amended to read:

Subd. 8. **Counseling; requirement; penalty.** ~~A lender, mortgage banking company, or other mortgage lender not related to the mortgagor must keep a certificate on file documenting that the borrower, prior to entering into the reverse mortgage loan, received counseling as defined in this subdivision from an organization that meets the requirements of section 462A.209 and is a~~ Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, a lender must:

(1) refer the prospective borrower to an independent housing counseling agency approved by the United States Department of Housing and Urban Development. The certificate must for reverse mortgage counseling. The lender shall provide the prospective borrower with a list of at least three independent housing counseling agencies approved by the United States Department of Housing and Urban Development. The lender shall positively promote the benefits of reverse mortgage counseling to the potential borrower; and

(2) receive a certification from the applicant or the applicant's authorized representative that the applicant has received counseling as defined in this subdivision from an independent counseling agency as described in clause (1). The certification must be signed by the mortgagor applicant and the counselor from the independent agency and must include the date of the counseling, and the name, address, and telephone number of both the mortgagor and the organization providing counseling. counselor from the independent agency and the applicant. The lender shall maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage. A failure by the lender to comply with this subdivision results in a \$1,000 civil penalty payable to the mortgagor borrower. For the purposes of this subdivision, "counseling" means that during a session, which must be no less than 60 minutes, the following services are provided to the borrower:

~~(1) (i) a review of the advantages and disadvantages of reverse mortgage programs;~~
~~(2) an explanation of how the reverse mortgage affects the borrower's estate and public benefits;~~

~~(3) an explanation of the lending process;~~
~~(4) a discussion of the borrower's supplemental income needs; and~~
~~(5) an opportunity to ask questions of the counselor.~~

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

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

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

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

(vi) an explanation of the lending process; and

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

Sec. 4. Minnesota Statutes 2008, section 47.58, is amended by adding a subdivision to read:

Subd. 9. **Lender default; forfeiture.** 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 the loan documents, shall forfeit any right to repayment of the outstanding loan balance. Any mortgage that is not federally insured securing a reverse mortgage agreement in which a forfeiture has occurred pursuant to this subdivision may be declared null and void by a court of competent jurisdiction.

Sec. 5. Minnesota Statutes 2008, section 47.58, is amended by adding a subdivision to read:

Subd. 10. **Lender responsibility.** When a reverse mortgage is sold to a subsequent purchaser, the subsequent purchaser is responsible and liable for the acts of the originator.

Sec. 6. Minnesota Statutes 2008, section 47.58, is amended by adding a subdivision to read:

Subd. 11. **Right of rescission.** (a) The borrower may rescind any reverse mortgage within ten days of execution by providing written notice to the lender.

(b) The lender shall provide the borrower with the following notice, which must be on a separate piece of paper and in at least ten-point type, between 24 to 72 hours prior to execution of the reverse mortgage:

"You are entitled to rescind (cancel) this reverse mortgage transaction for any reason within ten days from the day you execute the reverse mortgage documents. The rescission must be in writing and sent by certified mail to the lender at the address stated in this document."

(c) Notice of recission, is effective when the borrower deposits a certified letter properly addressed and postage prepaid in the mailbox.

(d) A notice of rescission given by the borrower need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the borrower not to be bound by the reverse mortgage transaction.

(e) No act of the borrower is effective to waive the right to rescind as provided in this section.

Sec. 7. Minnesota Statutes 2008, section 47.58, is amended by adding a subdivision to read:

Subd. 12. **Suitability.** In recommending the purchase of any reverse mortgage loan to a borrower, a lender must have reasonable grounds for believing that the recommendation is suitable for the borrower and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of a reverse mortgage loan will be determined by reference to the totality of the particular borrower's circumstances, including but not limited to, the borrower's income, age, assets, need for a reverse mortgage, and the values, benefits, and costs of the recommended reverse mortgage loan, when compared to the values, benefits, and costs of other loan options that may be available to the borrower.

Sec. 8. **[58.19] REVERSE MORTGAGE LOANS COORDINATION WITH CHAPTER 47.**

No person acting as a residential mortgage originator or servicer, including a person required to be licensed under this chapter, and no person exempt from the licensing requirements of this chapter under section 58.04, shall make, provide, or arrange for a reverse mortgage as defined in chapter 47 without complying with that chapter and verifying that the reverse mortgage is suitable for the borrower.

Sec. 9. **[60K.57] CROSS-SELLING LIMITATIONS ON REVERSE MORTGAGE PROCEEDS.**

No producer shall sell or encourage the purchase of an annuity, life insurance, or long-term care insurance product where the producer knows or should know that the purchase will be made using proceeds from a reverse mortgage.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 9 are effective the day following final enactment.