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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 333

- 01/25/2021 Authored by Kotyza-Witthuhn, Howard, Edelson, Davids, Lillie and others
- The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
- 02/08/2021 Adoption of Report: Re-referred to the Committee on Judiciary Finance and Civil Law
- 02/11/2021 Adoption of Report: Placed on the General Register
- Read for the Second Time
- 03/18/2021 Calendar for the Day
- Read for the Third Time
- Passed by the House and transmitted to the Senate
- 03/25/2021 Passed by the Senate and returned to the House
- Presented to Governor
- 03/26/2021 Governor Approval

1.1 A bill for an act

1.2 relating to commerce; requiring notices for reverse mortgage loans; amending

1.3 Minnesota Statutes 2020, 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 2020, 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 supervised by the comptroller of the currency or ~~federally chartered savings~~

1.22 ~~association supervised by the Federal Home Loan Bank Board or~~ federally chartered credit

2.1 union supervised by the National Credit Union Administration, to the extent permitted by
2.2 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) "Reverse mortgage loan servicer" or "servicer" means a person who performs servicing
 3.12 for a reverse mortgage loan.

3.13 (g) "Servicing" has the meaning given in section 58.02, subdivision 22. For purposes of
 3.14 this section, servicing includes disbursing loan proceeds to a borrower and determining
 3.15 whether a borrower continues to occupy the secured property as the borrower's primary
 3.16 residence.

3.17 (h) "Third-party designee" means an individual whom the borrower designates in the
 3.18 reverse mortgage loan agreement to receive the communications described in subdivision
 3.19 6a from a servicer.

3.20 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to reverse
 3.21 mortgage loans originated on or after that date.

3.22 Sec. 2. Minnesota Statutes 2020, section 47.58, is amended by adding a subdivision to
 3.23 read:

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

3.30 (b) The servicer may:

3.31 (1) mail the communications required under paragraph (a) to the third-party designee at
 3.32 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 is considered sufficient
4.5 authorization for the servicer to communicate with a third-party designee who initiates
4.6 communication with the servicer via telephone, 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, executed by a person having
4.9 knowledge of the facts, that includes the reverse mortgage document recording number and
4.10 a statement affirming compliance with the requirements under paragraph (a). The affidavit
4.11 is prima facie evidence of the facts stated in the affidavit and recordation is prima facie
4.12 evidence 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 before the redemption
4.15 period specified under section 580.23 expires. There is a rebuttable presumption that the
4.16 servicer failed to communicate with a third-party designee absent a recorded affidavit, as
4.17 described in paragraph (d).

4.18 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to reverse
4.19 mortgage loans originated on or after that date.

4.20 Sec. 3. Minnesota Statutes 2020, 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 and the borrower has consented on the form provided under subdivision 8, the servicer must
4.25 mail a copy of unanswered written communications and copies of subsequent written
4.26 communications from the servicer regarding delinquencies, defaults, and unfulfilled
4.27 obligations, that may result in foreclosure under a reverse mortgage loan agreement to the
4.28 independent counseling agency identified in the loan agreement.

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

4.32 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to reverse
4.33 mortgage loans originated on or after that date.

5.1 Sec. 4. Minnesota Statutes 2020, 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, that may result in foreclosure under a
6.18 reverse mortgage loan agreement. The counselor must provide the borrower with the
6.19 following blank form, which must be in at least 14-point type, for the borrower to complete
6.20 if desired and present to the lender when entering into the loan agreement:

6.21 **Authorization Form**

6.22 **1. Authorization for Third-Party Designee to Receive/Initiate Communications**

6.23 I, (name of borrower), authorize my lender or servicer to send copies of any written
6.24 communications from the servicer regarding delinquencies, defaults, and unfulfilled
6.25 obligations, that could result in foreclosure under a reverse mortgage loan agreement, as
6.26 provided under Minnesota Statutes, section 47.58, subdivisions 6a and 6b, to the individual
6.27 designated below.

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

6.30 **Designee Contact Information:**

6.31 Name:.....

7.1 Address:.....

7.2 Telephone Number(s):.....

7.3 E-mail Address:.....

7.4 **2. Authorization for Reverse Mortgage Counseling Agency to Receive**
7.5 **Communications**

7.6 Please indicate below if you authorize your servicer to also send copies of any written
7.7 communications that will be sent to the third-party designee to the independent counseling
7.8 agency that provided you with reverse mortgage loan counseling.

7.9 (Check one)

7.10 I authorize my lender or servicer to also send copies of any
7.11 written communications that will be sent to the third-party
7.12 designee to the independent counseling agency that provided
7.13 me with reverse mortgage loan counseling.

7.14 I DO NOT authorize my lender or servicer to also send copies
7.15 of any written communications that will be sent to the
7.16 third-party designee to the independent counseling agency
7.17 that provided me with reverse mortgage loan counseling.

7.18 Name of Borrower (print name):

7.19 Signature of Borrower:.....

7.20 Date:.....

7.21 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to reverse
7.22 mortgage loans originated on or after that date.