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State of Minnesota

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

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) "Alternate individual" means an individual described in Code of Federal Regulations,  
3.12 title 24, section 206.40, designated by the borrower as the individual to contact if the borrower  
3.13 does not respond to communications regarding the reverse mortgage loan.

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, the borrower's heirs, and the borrower's  
3.18 family members; determining whether a borrower continues to occupy a home as a primary  
3.19 residence; managing delinquencies and defaults; initiating, assisting, or facilitating a  
3.20 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 alternate individual.** (a) If a borrower has designated  
3.27 an alternate individual in a reverse mortgage loan agreement, the reverse mortgage loan  
3.28 servicer must provide the borrower and alternate individual notice of (1) delinquencies,  
3.29 defaults, unfulfilled obligations under the agreement, and (2) any other circumstances that  
3.30 may result in foreclosure if there is a failure to cure or comply.

3.31 (b) The notice required under paragraph (a) must be provided by the reverse mortgage  
3.32 loan servicer to the borrower and alternate individual via all methods of communication  
3.33 provided on the form described in subdivision 8.

4.1 (c) A reverse mortgage loan servicer may demonstrate compliance with this subdivision  
 4.2 by recording with the county recorder or registrar of titles an affidavit by a person having  
 4.3 knowledge of the facts stating the notice required by this subdivision has been delivered to  
 4.4 the borrower and alternate individual. The affidavit is prima facie evidence of the facts  
 4.5 stated in the affidavit, and recordation is prima facie evidence of compliance with this  
 4.6 subdivision.

4.7 (d) Notice to an alternate individual may be provided:

4.8 (1) simultaneously with the notice provided to the borrower; or

4.9 (2) to the alternate individual after the borrower fails to respond to the initial notice  
 4.10 within the time period stated in the notice.

4.11 (e) A borrower has a cause of action under section 582.043, subdivision 7, if the servicer  
 4.12 fails to communicate with an alternate individual regarding (1) delinquencies, defaults,  
 4.13 unfulfilled obligations under the reverse mortgage loan agreement, or (2) any other  
 4.14 circumstances that may result in foreclosure if there is a failure to cure or comply. Absent  
 4.15 a recorded affidavit described in paragraph (c), there is a rebuttable presumption that the  
 4.16 reverse mortgage loan servicer failed to communicate with an alternate individual.

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

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

4.21 Subd. 6b. **Notice to independent counseling agency.** (a) A reverse mortgage loan  
 4.22 servicer must provide notice to the independent counseling agency identified in the agreement  
 4.23 of (1) delinquencies, defaults, unfulfilled obligations under a reverse mortgage loan  
 4.24 agreement, and (2) any other circumstances that may result in foreclosure if there is a failure  
 4.25 to cure or comply.

4.26 (b) The notice must be provided:

4.27 (1) simultaneously with the notice provided to the borrower and the alternate individual;  
 4.28 or

4.29 (2) after a borrower or an alternate individual fails to respond to the initial notice within  
 4.30 the time period stated in the notice.

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 designate an alternate individual to receive communications regarding (A)  
6.17 delinquencies, defaults, unfulfilled obligations under the agreement, and (B) any other  
6.18 circumstances that may result in foreclosure if there is a failure to cure or comply. If a  
6.19 borrower wants to designate an alternate individual, the following blank form must be  
6.20 provided to the borrower in 14-point type:

6.21 **Designation of Alternate Individual**

6.22 I, (name of borrower), designate the person named below as an alternate individual that  
6.23 my lender or servicer must contact and to whom my lender or servicer must send all  
6.24 communications regarding my mortgage, including communications about missed payments  
6.25 or other loan obligation, if my lender or servicer is unable to contact or communicate with  
6.26 me regarding these matters. I authorize the person named below to communicate on my  
6.27 behalf if the lender or servicer is unable to contact or communicate with me.

6.28 Designee Contact Information:

6.29 Name:.....

6.30 Telephone Number(s):.....

6.31 E-mail Address:.....

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

7.2 Signature of Borrower:.....

7.3 Date:.....

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