

AMENDED IN ASSEMBLY APRIL 22, 2013

CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 553

Introduced by Assembly Member Medina

February 20, 2013

An act to ~~add Section 1923.52 to~~ amend Sections 1923.2 and 1923.5 of the Civil Code, relating to reverse mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 553, as amended, Medina. Reverse mortgages: notifications.

Existing state and federal law regulate the activities of financial institutions. Existing state law regulates reverse mortgage loans and requires a lender to refer a prospective borrower to a housing counseling agency, as specified, and prohibits a lender from accepting a full and complete application for a reverse mortgage loan or assessing any fees without receiving certification, as specified, that the borrower has received loan counseling. Existing law prohibits a lender from taking a reverse mortgage application before having provided an applicant a specified disclosure notice and written checklist.

This bill would prohibit a lender from taking a reverse mortgage application ~~unless at least 7 days prior to receiving counseling the applicant has received from the lender a specified disclosure notice. The notice would indicate, among other things, that a reverse mortgage is a complex financial arrangement that may or may not be suitable for the applicant and that the applicant is required to consult with an independent loan counselor. or assessing any fees until seven days from the date of loan counseling, as specified. The bill would make specified changes to the disclosure notice. The bill would also delete the requirement that the lender provide a written checklist and would,~~

instead, prohibit a lender from taking a reverse mortgage application unless at least 7 days prior to receiving counseling the applicant has received from the lender a specified “Reverse Mortgage Suitability Self-evaluation Worksheet” that would provide, among other things, that the suitability of a recommended purchase of a reverse mortgage should be determined with reference to the totality of the particular borrower’s circumstances, goals, and needs. reverse mortgage worksheet guide. The bill would require that the worksheet would contain certain questions issues that the borrower is advised to consider and bring to his or her reverse mortgage counseling session. discuss with the counselor. The bill would require the counselor and the prospective borrower to sign the worksheet, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) A reverse mortgage is a loan that allows a homeowner to
- 3 convert home equity into tax-free cash payments. More than 90
- 4 percent of all reverse mortgages are obtained through the Home
- 5 Equity Conversion Mortgage (HECM) program sponsored by the
- 6 United States Department of Housing and Urban Development.
- 7 Many senior citizens use reverse mortgage payments to supplement
- 8 retirement income or pay medical expenses. Although the HECM
- 9 program has been in existence since 1989, the program has seen
- 10 rapid growth only in the past few years. As the population ages,
- 11 this growth rate is expected to accelerate. The growth rate is also
- 12 expected to increase as sales agents and lenders turn from the
- 13 declining subprime and conventional mortgage market to the
- 14 rapidly growing market for reverse mortgages.
- 15 (b) Because reverse mortgage decisionmaking involves a number
- 16 of complex issues, before committing to a loan every senior should
- 17 contemplate possible negative consequences. Every prospective
- 18 purchaser of a reverse mortgage should study and complete the
- 19 worksheet this act would require before attending their mandatory
- 20 HUD-approved reverse mortgage counseling session. No purchaser
- 21 should move forward in purchasing their reverse mortgage loan
- 22 unless and until he or she completes the self-evaluation and clearly
- 23 understands if a reverse mortgage is suitable for his or her needs.

1 *and discuss with an HUD-approved reverse mortgage counselor*
2 *the items in the reverse mortgage worksheet guide specified in*
3 *subdivision (b) of Section 1923.5 of the Civil Code.*

4 (c) ~~This act shall be known, and may be cited, as the Reverse~~
5 ~~Mortgage Elder Protection Act of 2013. In enacting the Reverse~~
6 ~~Mortgage Elder Protection Act of 2013, In specifying these~~
7 ~~requirements, it is not the intent of the Legislature to discourage~~
8 ~~the use of reverse mortgages, which often provide substantial~~
9 ~~benefits to senior citizens. Rather, anticipating the continued rapid~~
10 ~~growth in the reverse mortgage market, the Reverse Mortgage~~
11 ~~Elder Protection Act of 2013 seeks these requirements seek to~~
12 ~~ensure that senior citizens will make informed decisions and that~~
13 ~~persons who offer, sell, or arrange the sale of reverse mortgages~~
14 ~~to senior citizens will act in the best interest of a sometimes~~
15 ~~vulnerable population: reverse mortgage loan borrowers.~~

16 SEC. 2. ~~Section 1923.52 is added to the Civil Code, to read:~~

17 ~~1923.52. (a) No reverse mortgage loan application shall be~~
18 ~~taken by a lender unless the loan applicant, at least seven days~~
19 ~~prior to receiving counseling, has received from the lender the~~
20 ~~following plain language statement in 16-point font or larger,~~
21 ~~advising the prospective borrower about preparing for counseling~~
22 ~~prior to the prospective borrower’s counseling session:~~

23
24 **IMPORTANT NOTICE TO REVERSE MORTGAGE LOAN**
25 **APPLICANT**

26 ~~A REVERSE MORTGAGE IS A COMPLEX FINANCIAL~~
27 ~~TRANSACTION THAT MAY OR MAY NOT BE SUITABLE~~
28 ~~FOR YOUR IMMEDIATE AND OR FUTURE NEEDS. IF YOU~~
29 ~~DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU~~
30 ~~WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL~~
31 ~~HAVE IMPORTANT LEGAL AND FINANCIAL~~
32 ~~IMPLICATIONS FOR YOU AND YOUR ESTATE. IT IS~~
33 ~~THEREFORE IMPORTANT TO UNDERSTAND THE~~
34 ~~IMPLICATION OF BECOMING INVOLVED IN A REVERSE~~
35 ~~MORTGAGE LOAN AND FOR YOU TO BE PREPARED TO~~
36 ~~DISCUSS WITH A REVERSE MORTGAGE COUNSELOR~~
37 ~~WHETHER OR NOT A REVERSE MORTGAGE LOAN IS~~
38 ~~SUITABLE FOR YOU. BEFORE ENTERING INTO THIS~~
39 ~~TRANSACTION, YOU ARE REQUIRED TO CONSULT WITH~~
40 ~~AN INDEPENDENT LOAN COUNSELOR.~~

1
2 (b) In addition to the plain statement notice described in
3 subdivision (a), no reverse mortgage loan application shall be taken
4 by a lender unless the lender provides the prospective borrower
5 with a written suitability worksheet at least seven days prior to his
6 or her meeting with a HUD-approved counseling agency on reverse
7 mortgages. The suitability worksheet shall alert the prospective
8 borrower, in 16-point font or larger, that he or she should discuss
9 suitability issues with the agency counselor. The worksheet shall
10 read as follows:

11
12 The State of California has determined that it is in your best
13 interest to review and complete this worksheet before you attend
14 your reverse mortgage counseling session. You are also advised
15 to discuss every concern you may have about suitability with your
16 counselor. You should not move forward with purchasing a reverse
17 mortgage loan unless you understand whether or not a reverse
18 mortgage is a suitable loan for you. Carefully read through each
19 of these suitability questions and make notes on a separate piece
20 of paper of any question or questions you may have about
21 suitability. Have these questions with you when you have your
22 reverse mortgage counseling session. The purpose of the counseling
23 session is for you to have an opportunity to speak openly and
24 candidly with a neutral professional whose sole purpose is to help
25 you understand what it means to become involved with this
26 particular loan.

27 Reverse Mortgage Suitability Self-evaluation Worksheet

28 The suitability of a recommended purchase of a reverse mortgage
29 should be determined, with reference to the totality of the particular
30 borrower's circumstances, goals, and needs, including, but not
31 limited to, the following:

32 Directions: Carefully read through each of these suitability
33 questions and make notes on a separate piece of paper regarding
34 any question you may have about suitability. You are also advised
35 to bring these questions with you when you have your reverse
36 mortgage counseling session. The purpose of the counseling session
37 is for you to have an opportunity to speak openly and candidly
38 with a neutral professional whose sole purpose is to help you
39 understand what it means to become involved with this particular
40 loan.

1 ~~1. What happens to others in your home after you die or move~~
2 ~~out?~~

3 ~~Rule: When the borrower dies, moves, or is absent from the~~
4 ~~home for 12 consecutive months, the loan becomes due.~~

5 ~~Considerations: Having a reverse mortgage affects the future of~~
6 ~~all those living with you. If the loan cannot be paid off, then the~~
7 ~~home will have to be sold in order to satisfy the lender.~~

8 ~~•Who is currently living in the home with you?~~

9 ~~•What will they do when you die or permanently move from~~
10 ~~the home?~~

11 ~~•Have you discussed this with all those living with you or any~~
12 ~~family members?~~

13 ~~•Who will pay off the loan, and have you discussed this with~~
14 ~~them?~~

15 ~~•If your heirs do not have enough money to pay off the loan,~~
16 ~~the home will pass into foreclosure.~~

17 ~~Do you need to discuss this with your counselor? Yes or No~~

18 ~~–~~

19 ~~2. Do you know that you can default on a reverse mortgage?~~

20 ~~Rule: There are three continuous financial obligations. If you~~
21 ~~fail to keep up with your insurance, property taxes, and home~~
22 ~~maintenance, you will go into default. Uncured defaults lead to~~
23 ~~foreclosures.~~

24 ~~Considerations: Will you have adequate resources and income~~
25 ~~to support your financial needs and obligations once you have~~
26 ~~removed all of your available equity with a reverse mortgage?~~

27 ~~•Are you contemplating a lump-sum withdrawal?~~

28 ~~•What other resources will you have once you have reached~~
29 ~~your equity withdrawal limit?~~

30 ~~•Will you have funds to pay for unexpected medical expenses?~~

31 ~~•Will you have the ability to finance alternative living~~
32 ~~accommodations, such as independent living, assisted living, or a~~
33 ~~long-term care nursing home?~~

34 ~~•Will you have the ability to finance routine or catastrophic~~
35 ~~home repairs, especially if maintenance is a factor that may~~
36 ~~determine when the mortgage becomes payable?~~

37 ~~Do you need to discuss this with your counselor? Yes or No~~

38 ~~–~~

39 ~~3. Have you fully explored other options?~~

40 ~~Rule: Less costly options may exist.~~

1 Consideration: Reverse mortgages are compounding loans, and
2 the debt to the lender accelerates as time goes on. You may want
3 to consider using less expensive alternatives or other assets you
4 may have before you commit to a reverse mortgage.

5 •Alternative financial options for seniors may include, but not
6 be limited to, less costly home equity lines of credit, property tax
7 deferral programs, or governmental aid programs.

8 •With peer-to-peer lending or other contractual arrangements,
9 you can use your home equity to secure loans from family
10 members, friends, or would-be heirs.

11 Do you need to discuss this with your counselor? Yes or No

12 -

13 4. Are you intending to use the reverse mortgage to purchase a
14 financial product?

15 Rule: Reverse mortgages are interest-accruing loans.

16 Considerations: Due to the high cost and accelerating debt
17 incurred by reverse mortgages, using home equity to finance
18 investments is not suitable in most instances.

19 •The cost of the reverse mortgage loan may exceed any financial
20 gain from any product purchased.

21 •Will the financial product you are considering freeze or
22 otherwise tie up your money?

23 •There may be high surrender fees, service charges, or
24 undisclosed costs on the financial products purchased with the
25 proceeds of a reverse mortgage.

26 •Has the sales agent offering the financial product discussed
27 suitability with you, and has the agent given you a written
28 suitability evaluation?

29 Do you need to discuss this with your counselor? Yes or No

30 -

31 5. The impact of reverse mortgages on your eligibility for
32 government assistance programs.

33 Rule: Income received from investments will count against
34 individuals seeking government assistance.

35 Considerations: Converting your home equity into investments
36 may create nonexempt asset statuses.

37 •There are state and federal taxes on the income investments
38 financed through home equity.

39 •If you go into a nursing home for an extended period of time,
40 the reverse mortgage loan will become due, the home may be sold,

1 and any proceeds from the sale of the home may make you
2 ineligible for government benefits.

3 • If the homeowner is a Medi-Cal beneficiary, a reverse mortgage
4 may stymie the ability to transfer the home, thus, resulting in
5 Medi-Cal recovery.

6 Do you need to discuss this with your counselor? Yes or No

7 SEC. 2. Section 1923.2 of the Civil Code is amended to read:

8 1923.2. A reverse mortgage loan shall comply with all of the
9 following requirements:

10 (a) Prepayment, in whole or in part, shall be permitted without
11 penalty at any time during the term of the reverse mortgage loan.
12 For the purposes of this section, penalty does not include any fees,
13 payments, or other charges that would have otherwise been due
14 upon the reverse mortgage being due and payable.

15 (b) A reverse mortgage loan may provide for a fixed or
16 adjustable interest rate or combination thereof, including compound
17 interest, and may also provide for interest that is contingent on the
18 value of the property upon execution of the loan or at maturity, or
19 on changes in value between closing and maturity.

20 (c) A reverse mortgage may include costs and fees that are
21 charged by the lender, or the lender's designee, originator, or
22 servicer, including costs and fees charged upon execution of the
23 loan, on a periodic basis, or upon maturity.

24 (d) If a reverse mortgage loan provides for periodic advances
25 to a borrower, these advances shall not be reduced in amount or
26 number based on any adjustment in the interest rate.

27 (e) A lender who fails to make loan advances as required in the
28 loan documents, and fails to cure an actual default after notice as
29 specified in the loan documents, shall forfeit to the borrower treble
30 the amount wrongfully withheld plus interest at the legal rate.

31 (f) The reverse mortgage loan may become due and payable
32 upon the occurrence of any one of the following events:

33 (1) The home securing the loan is sold or title to the home is
34 otherwise transferred.

35 (2) All borrowers cease occupying the home as a principal
36 residence, except as provided in subdivision (g).

37 (3) Any fixed maturity date agreed to by the lender and the
38 borrower occurs.

39 (4) An event occurs which is specified in the loan documents
40 and which jeopardizes the lender's security.

1 (g) Repayment of the reverse mortgage loan shall be subject to
2 the following additional conditions:

3 (1) Temporary absences from the home not exceeding 60
4 consecutive days shall not cause the mortgage to become due and
5 payable.

6 (2) Extended absences from the home exceeding 60 consecutive
7 days, but less than one year, shall not cause the mortgage to become
8 due and payable if the borrower has taken prior action which
9 secures and protects the home in a manner satisfactory to the
10 lender, as specified in the loan documents.

11 (3) The lender’s right to collect reverse mortgage loan proceeds
12 shall be subject to the applicable statute of limitations for written
13 loan contracts. Notwithstanding any other provision of law, the
14 statute of limitations shall commence on the date that the reverse
15 mortgage loan becomes due and payable as provided in the loan
16 agreement.

17 (4) The lender shall prominently disclose in the loan agreement
18 any interest rate or other fees to be charged during the period that
19 commences on the date that the reverse mortgage loan becomes
20 due and payable, and that ends when repayment in full is made.

21 (h) The first page of any deed of trust securing a reverse
22 mortgage loan shall contain the following statement in 10-point
23 boldface type: “This deed of trust secures a reverse mortgage loan.”

24 (i) A lender or any other person that participates in the
25 origination of the mortgage shall not require an applicant for a
26 reverse mortgage to purchase an annuity as a condition of obtaining
27 a reverse mortgage loan.

28 (1) The lender or any other person that participates in the
29 origination of the mortgage shall not do either of the following:

30 (A) Participate in, be associated with, or employ any party that
31 participates in or is associated with any other financial or insurance
32 activity, unless the lender maintains procedural safeguards designed
33 to ensure that individuals participating in the origination of the
34 mortgage shall have no involvement with, or incentive to provide
35 the prospective borrower with, any other financial or insurance
36 product.

37 (B) Refer the borrower to anyone for the purchase of an annuity
38 or other financial or insurance product prior to the closing of the
39 reverse mortgage or before the expiration of the right of the
40 borrower to rescind the reverse mortgage agreement.

1 (2) This subdivision does not prevent a lender from offering or
2 referring borrowers for title insurance, hazard, flood, or other peril
3 insurance, or other similar products that are customary and normal
4 under a reverse mortgage loan.

5 (3) A lender or any other person who participates in the
6 origination of a reverse mortgage loan to which this subdivision
7 would apply, and who complies with paragraph (1) of subsection
8 (n), and with subsection (o), of Section 1715z-20 of Title 12 of
9 the United States Code, and any regulations and guidance
10 promulgated under that section, as amended from time to time, in
11 offering the loan, regardless of whether the loan is originated
12 pursuant to the program authorized under Section 1715z-20 of
13 Title 12 of the United States Code, and any regulations and
14 guidance promulgated under that section, shall be deemed to have
15 complied with this subdivision.

16 (j) Prior to accepting a final and complete application for a
17 reverse mortgage the lender shall provide the borrower with a list
18 of not fewer than 10 counseling agencies that are approved by the
19 United States Department of Housing and Urban Development to
20 engage in reverse mortgage counseling as provided in Subpart B
21 of Part 214 of Title 24 of the Code of Federal Regulation. The
22 counseling agency shall not receive any compensation, either
23 directly or indirectly, from the lender or from any other person or
24 entity involved in originating or servicing the mortgage or the sale
25 of annuities, investments, long-term care insurance, or any other
26 type of financial or insurance product. This subdivision does not
27 prevent a counseling agency from receiving financial assistance
28 that is unrelated to the offering or selling of a reverse mortgage
29 loan and that is provided by the lender as part of charitable or
30 philanthropic activities.

31 (k) A lender shall not accept a final and complete application
32 for a reverse mortgage loan from a prospective applicant or assess
33 any fees upon a prospective applicant *until the elapse of seven*
34 *days from the date of counseling as evidenced by the counseling*
35 *certification and* without first receiving certification from the
36 applicant or the applicant's authorized representative that the
37 applicant has received counseling from an agency as described in
38 subdivision (j) and that the counseling was conducted in person,
39 unless the certification specifies that the applicant elected to receive
40 the counseling in a manner other than in person. The certification

1 shall be signed by the borrower and the agency counselor, and
 2 shall include the date of the counseling and the name, address, and
 3 telephone number of both the counselor and the applicant.
 4 Electronic facsimile copy of the housing counseling certification
 5 satisfies the requirements of this subdivision. The lender shall
 6 maintain the certification in an accurate, reproducible, and
 7 accessible format for the term of the reverse mortgage.

8 (l) A lender shall not make a reverse mortgage loan without
 9 first complying with, or in the case of brokered loans ensuring
 10 compliance with, the requirements of Section 1632, if applicable.

11 *SEC. 3. Section 1923.5 of the Civil Code is amended to read:*

12 1923.5. (a) No reverse mortgage loan application shall be
 13 taken by a lender unless the loan applicant, prior to receiving
 14 counseling, has received from the lender the following plain
 15 language statement in conspicuous 16-point type or larger, advising
 16 the prospective borrower about counseling prior to obtaining the
 17 reverse mortgage loan:

18
 19 **IMPORTANT NOTICE**
 20 **TO REVERSE MORTGAGE LOAN APPLICANT**

21
 22 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL
 23 TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE
 24 MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL
 25 DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND
 26 FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE.
 27 IT IS THEREFORE IMPORTANT TO UNDERSTAND THE
 28 TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT
 29 *ON YOUR IMMEDIATE FUTURE NEEDS*. BEFORE ENTERING
 30 INTO THIS TRANSACTION, YOU ARE REQUIRED TO
 31 CONSULT WITH AN INDEPENDENT *REVERSE MORTGAGE*
 32 *LOAN COUNSELOR TO DISCUSS WHETHER OR NOT A*
 33 *REVERSE MORTGAGE IS SUITABLE FOR YOU*. A LIST OF
 34 APPROVED COUNSELORS WILL BE PROVIDED TO YOU
 35 BY THE LENDER.

36 SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST
 37 USING THE PROCEEDS OF A REVERSE MORTGAGE TO
 38 PURCHASE AN ANNUITY OR RELATED FINANCIAL
 39 PRODUCTS. IF YOU ARE CONSIDERING USING YOUR
 40 PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS

1 THE FINANCIAL IMPLICATIONS OF DOING SO WITH
2 YOUR COUNSELOR AND FAMILY MEMBERS.

3
4 (b) (1) In addition to the plain statement notice described in
5 subdivision (a), no reverse mortgage loan application shall be taken
6 by a lender unless the lender provides the prospective borrower,
7 prior to his or her meeting with a counseling agency on reverse
8 mortgages, with a ~~written checklist, or in the event that the~~
9 ~~prospective borrower seeks counseling prior to requesting a reverse~~
10 ~~mortgage loan application from the reverse mortgage lender, the~~
11 ~~counseling agency shall provide the prospective borrower with a~~
12 ~~written checklist.~~ *reverse mortgage worksheet guide.* ~~The written~~
13 ~~checklist~~ *reverse mortgage worksheet guide* shall conspicuously
14 alert the prospective borrower, in 12-point type or larger, that he
15 or she should discuss with the agency counselor the following
16 issues:

17 (A) How unexpected medical or other events that cause the
18 prospective borrower to move out of the home, either permanently
19 or for more than one year, earlier than anticipated will impact the
20 total annual loan cost of the mortgage.

21 (B) The extent to which the prospective borrower's financial
22 needs would be better met by options other than a reverse
23 mortgage, including, but not limited to, less costly home equity
24 lines of credit, property tax deferral programs, or governmental
25 aid programs.

26 (C) Whether the prospective borrower intends to use the
27 proceeds of the reverse mortgage to purchase an annuity or other
28 insurance products and the consequences of doing so.

29 (D) The effect of repayment of the loan on nonborrowing
30 residents of the home after all borrowers have died or permanently
31 left the home. *and that a 12-consecutive month absence by the*
32 *borrower will cause the reverse mortgage loan to become due.*

33 ~~(E) The prospective borrower's ability to finance routine or~~
34 ~~catastrophic home repairs, especially if maintenance is a factor~~
35 ~~that may determine when the mortgage becomes payable.~~

36 (E) *Reverse mortgages require three continuous obligations of*
37 *the borrower: maintenance and repair of the home, payment of*
38 *property taxes, and payment of property insurance premiums. A*
39 *failure to do any of these items could lead to default on the reverse*
40 *mortgage.*

- 1 (F) The impact that the reverse mortgage may have on the
- 2 prospective borrower’s tax obligations, eligibility for government
- 3 assistance programs, and the effect that losing equity in the home
- 4 will have on the borrower’s estate and heirs.
- 5 (G) The ability of the borrower to finance alternative living
- 6 accommodations, such as assisted living or long-term care nursing
- 7 home registry, after the borrower’s equity is depleted.
- 8 (H) *That a reverse mortgage is a compounding loan and that*
- 9 *the debt may accelerate over time.*
- 10 (I) *The risks associated with using the proceeds of a reverse*
- 11 *mortgage to purchase investment products.*
- 12 (2) ~~The checklist~~ *reverse mortgage worksheet guide* required
- 13 in paragraph (1) shall be signed by the agency counselor, if the
- 14 counseling is done in person, and by the prospective borrower and
- 15 returned to the lender along with the certification of counseling
- 16 required under subdivision (k) of Section 1923.2, and the loan
- 17 application shall not be approved until the signed ~~checklist~~ *reverse*
- 18 *mortgage worksheet guide* is provided to the lender. A copy of the
- 19 ~~checklist~~ *reverse mortgage worksheet guide* shall be provided to
- 20 the borrower.