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Senate Engrossed House Bill-----
State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 127

HOUSE BILL 2242

AN ACT

AMENDING TITLE 6, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 16; RELATING TO REVERSE MORTGAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 6, Arizona Revised Statutes, is amended by adding chapter 16, to read:

CHAPTER 16

REVERSE MORTGAGES

ARTICLE 1. GENERAL PROVISIONS

6-1601. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AGREEMENT" MEANS THE DOCUMENT THAT ON EXECUTION OBLIGATES THE BORROWER AND ORIGINATOR UNDER THE REVERSE MORTGAGE.
2. "DWELLING" MEANS A RESIDENCE THAT IS DESIGNED PRINCIPALLY FOR AT LEAST ONE AND NOT MORE THAN FOUR FAMILIES IN WHICH THE BORROWER OCCUPIES AT LEAST ONE OF THE UNITS.
3. "HOUSING COUNSELING AGENCY" MEANS AN AGENCY THAT IS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO PROVIDE REVERSE MORTGAGE COUNSELING.
4. "ORIGINATOR" MEANS A PERSON WHO REGULARLY MAKES OR BROKERS REVERSE MORTGAGES, INCLUDING A CREDITOR OR BROKER.
5. "REVERSE MORTGAGE" MEANS A NONRECOURSE CONSUMER CREDIT OBLIGATION TO WHICH ALL OF THE FOLLOWING APPLY:
 - (a) A MORTGAGE, DEED OF TRUST OR EQUIVALENT CONSENSUAL SECURITY INTEREST SECURING ONE OR MORE ADVANCES IS CREATED IN THE BORROWER'S PRINCIPAL DWELLING.
 - (b) ANY PRINCIPAL, INTEREST OR SHARED APPRECIATION OR EQUITY IS DUE AND PAYABLE ONLY AFTER THE BORROWER DIES, THE DWELLING IS TRANSFERRED OR THE BORROWER CEASES TO OCCUPY THE DWELLING AS A PRINCIPAL DWELLING. THIS SUBDIVISION DOES NOT APPLY IN THE CASE OF DEFAULT.
 - (c) CASH ADVANCES MAY BE PROVIDED TO A BORROWER:
 - (i) BASED ON THE EQUITY OR THE VALUE IN THE BORROWER'S OWNER OCCUPIED PRINCIPAL RESIDENCE.
 - (ii) IF LOAN PROCEEDS ARE USED BY THE BORROWER TO PURCHASE THE BORROWER'S DWELLING THAT SECURES THE REVERSE MORTGAGE.
 - (d) THE CONSUMER CREDIT OBLIGATION IS NOT A HOME EQUITY CONVERSION MORTGAGE INSURED BY THE FEDERAL HOUSING AUTHORITY.

6-1602. Financial counseling; counselor requirements

A. ADEQUATE COUNSELING UNDER THIS CHAPTER MUST BE PROVIDED BY A COUNSELOR WHO IS AN INDEPENDENT THIRD PARTY.

B. TO QUALIFY AS AN INDEPENDENT THIRD PARTY, THE COUNSELOR MAY NOT BE ASSOCIATED WITH OR COMPENSATED, DIRECTLY OR INDIRECTLY, BY A PARTY INVOLVED IN ANY OF THE FOLLOWING:

1. ORIGINATING OR SERVICING THE REVERSE MORTGAGE.
2. FUNDING THE LOAN UNDERLYING THE REVERSE MORTGAGE.
3. SELLING ANNUITIES, INVESTMENTS, LONG-TERM CARE INSURANCE OR ANY OTHER TYPE OF FINANCIAL OR

INSURANCE PRODUCT.

C. COUNSELING SERVICES REQUIRED PURSUANT TO THIS CHAPTER SHALL BE PROVIDED BY HOUSING COUNSELING AGENCIES AND BY COUNSELORS WHO FOLLOW UNIFORM COUNSELING PROTOCOLS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

6-1603. Required disclosures; counseling

A. BEFORE ACCEPTING A FINAL AND COMPLETE APPLICATION FOR A REVERSE MORTGAGE OR ASSESSING ANY FEES, THE ORIGINATOR SHALL:

1. PROVIDE THE BORROWER WITH A LIST OF AT LEAST FIVE HOUSING COUNSELING AGENCIES, INCLUDING AT LEAST TWO HOUSING COUNSELING AGENCIES THAT CAN PROVIDE COUNSELING BY TELEPHONE.
2. RECEIVE FROM THE BORROWER OR THE BORROWER'S AUTHORIZED REPRESENTATIVE A CERTIFICATION THAT THE BORROWER HAS RECEIVED COUNSELING FROM A HOUSING COUNSELING AGENCY. THE CERTIFICATION SHALL BE SIGNED BY THE BORROWER AND THE HOUSING COUNSELING AGENCY COUNSELOR AND SHALL INCLUDE THE DATE OF THE COUNSELING AND THE NAME AND ADDRESS OF BOTH THE COUNSELOR AND THE BORROWER. THE DATE ON THE CERTIFICATION MUST SHOW THAT THE COUNSELING OCCURRED WITHIN THE SIX MONTHS PRECEDING THE BORROWER ACCEPTING A FINAL AND COMPLETE APPLICATION FOR A REVERSE MORTGAGE. AN ELECTRONIC COPY OF THE HOUSING COUNSELING CERTIFICATION SATISFIES THE REQUIREMENTS OF THIS PARAGRAPH. THE ORIGINATOR SHALL MAINTAIN THE CERTIFICATION IN AN ACCURATE, REPRODUCIBLE AND ACCESSIBLE FORMAT FOR THE TERM OF THE REVERSE MORTGAGE.

B. AT LEAST TEN DAYS BEFORE LOAN CLOSING, THE ORIGINATOR SHALL MAKE AVAILABLE TO THE BORROWER A STATEMENT INFORMING THE BORROWER THAT THE BORROWER'S LIABILITY UNDER THE REVERSE MORTGAGE IS LIMITED AND EXPLAINING THE BORROWER'S RIGHTS, OBLIGATIONS, REMEDIES WITH RESPECT TO TEMPORARY ABSENCES FROM THE HOME, LATE PAYMENTS AND PAYMENT DEFAULT BY THE ORIGINATOR AND ALL CONDITIONS REQUIRING SATISFACTION OF THE LOAN OBLIGATION.

C. BEFORE ENTERING INTO A REVERSE MORTGAGE, AN ORIGINATOR SHALL FULLY DISCLOSE IN WRITING:

1. ALL COSTS CHARGED BY THE ORIGINATOR, INCLUDING COSTS OF ESTATE PLANNING, FINANCIAL ADVICE AND OTHER SERVICES THAT ARE RELATED TO THE REVERSE MORTGAGE BUT THAT ARE NOT REQUIRED TO OBTAIN THE REVERSE MORTGAGE. THE DISCLOSURE SHALL CLEARLY IDENTIFY WHICH CHARGES ARE REQUIRED TO OBTAIN THE REVERSE MORTGAGE AND WHICH CHARGES ARE NOT REQUIRED TO OBTAIN THE REVERSE MORTGAGE.

2. ALL TERMS AND PROVISIONS WITH RESPECT TO INSURANCE, REPAIRS, ALTERATIONS, PAYMENT OF TAXES, DEFAULT RESERVE, DELINQUENCY CHARGES, FORECLOSURE PROCEEDINGS, ANTICIPATION OF MATURITY AND ANY ADDITIONAL AND SECONDARY LIENS.

3. THE PROJECTED TOTAL COST OF THE REVERSE MORTGAGE TO THE BORROWER BASED ON THE PROJECTED TOTAL FUTURE LOAN BALANCE FOR AT LEAST TWO PROJECTED LOAN TERMS. THIS STATEMENT SHALL INCLUDE:

(a) THE COST FOR A SHORT-TERM MORTGAGE.
(b) THE COST FOR A LOAN TERM EQUALING THE ACTUARIAL LIFE EXPECTANCY OF THE BORROWER.

6-1604. Reverse mortgage; provisions

A. A REVERSE MORTGAGE MAY PROVIDE FOR A FIXED OR VARIABLE INTEREST RATE OR FUTURE SHARING BETWEEN THE ORIGINATOR AND THE BORROWER OF THE APPRECIATION IN THE VALUE OF THE PROPERTY, AS AGREED ON BY THE ORIGINATOR AND THE BORROWER.

B. THE REVERSE MORTGAGE AGREEMENT SHALL PROMINENTLY DISCLOSE ANY INTEREST RATE OR OTHER FEES TO BE CHARGED DURING THE PERIOD THAT BEGINS ON THE DATE THAT THE REVERSE MORTGAGE BECOMES DUE AND PAYABLE AND THAT ENDS WHEN REPAYMENT IN FULL IS MADE.

C. THE REVERSE MORTGAGE MAY PROVIDE FOR A SINGLE LUMP SUM DISBURSAL OF MONIES OUT OF HOME PURCHASE PROCEEDS AND SHALL PROVIDE FOR FUTURE PAYMENTS TO THE BORROWER BASED ON ACCUMULATED EQUITY MINUS ANY APPLICABLE FEES AND CHARGES ACCORDING TO THE METHOD THAT THE BORROWER SELECTS FROM AMONG THE FOLLOWING:

1. BASED ON A LINE OF CREDIT.
2. ON A MONTHLY BASIS OVER A TERM SPECIFIED BY THE BORROWER.
3. ON A MONTHLY BASIS OVER A TERM SPECIFIED BY THE BORROWER AND BASED ON A LINE OF CREDIT.
4. ON A MONTHLY BASIS OVER THE TENURE OF THE LOAN.
5. ON A MONTHLY BASIS OVER THE TENURE OF THE LOAN AND BASED ON A LINE OF CREDIT.

D. EXCEPT IN THE CASE OF A FIXED RATE REVERSE MORTGAGE, THE PROCEEDS OF WHICH ARE FULLY DISBURSED AT CLOSING, THE REVERSE MORTGAGE SHALL PROVIDE THAT THE BORROWER MAY CONVERT THE METHOD OF PAYMENT UNDER THIS SECTION TO ANY OTHER METHOD OFFERED BY THE LENDER DURING THE TERM OF THE REVERSE MORTGAGE.

E. THE REVERSE MORTGAGE SHALL CONTAIN RESTRICTIONS THAT ENSURE THE BORROWER DOES NOT FUND ANY UNNECESSARY COSTS FOR OBTAINING THE REVERSE MORTGAGE, INCLUDING ANY COSTS OF ESTATE PLANNING, FINANCIAL ADVICE OR OTHER RELATED SERVICES. THIS SUBSECTION DOES NOT APPLY TO COUNSELING FEES PAID TO A COUNSELOR WHO IS QUALIFIED UNDER SECTION 6-1602.

F. A BORROWER'S PRINCIPAL DWELLING SECURING A REVERSE MORTGAGE MAY BE HELD IN TRUST OR MAY BE AN INTEREST UNDER A LIFE ESTATE OR A LONG-TERM LEASE.

G. THE ORIGINATOR SHALL MAKE AVAILABLE TO THE BORROWER ON AN ANNUAL BASIS NOT LATER THAN JANUARY 31 A STATEMENT SUMMARIZING THE TOTAL PRINCIPAL AMOUNT PAID TO THE BORROWER UNDER THE LOAN SECURED BY THE REVERSE MORTGAGE, THE TOTAL AMOUNT OF DEFERRED INTEREST ADDED TO THE PRINCIPAL AND THE OUTSTANDING LOAN BALANCE AT THE END OF THE PRECEDING YEAR.

6-1605. Prepayment; repayment conditions

A. PREPAYMENT, IN WHOLE OR IN PART, SHALL BE PERMITTED WITHOUT PENALTY AT ANY TIME DURING THE TERM OF A REVERSE MORTGAGE.

B. FOR THE PURPOSES OF THIS SECTION, PENALTY DOES NOT INCLUDE:

1. ANY FEES, PAYMENTS OR OTHER CHARGES THAT WOULD OTHERWISE BE DUE WHEN THE REVERSE MORTGAGE BECOMES DUE AND PAYABLE.

2. ANY CLOSING COSTS THAT THE AGREEMENT STATES ARE OWED BY THE BORROWER IF THE BORROWER REPAYS THE REVERSE MORTGAGE IN WHOLE BEFORE THE DATE IN THE AGREEMENT, IF THE REPAYMENT OCCURS WITHIN FIVE YEARS AFTER THE DATE ON WHICH THE AGREEMENT WAS MADE.

C. A REVERSE MORTGAGE BECOMES DUE AND PAYABLE IF ANY OF THE FOLLOWING APPLIES:

1. THE PROPERTY IS NOT THE PRINCIPAL RESIDENCE OF AT LEAST ONE BORROWER.

2. A BORROWER CONVEYS ALL OF THE BORROWER'S TITLE IN THE PROPERTY AND NO OTHER BORROWER RETAINS TITLE.

3. FOR A PERIOD OF LONGER THAN TWELVE CONSECUTIVE MONTHS, A BORROWER FAILS TO OCCUPY THE PROPERTY BECAUSE OF PHYSICAL OR MENTAL ILLNESS AND THE PROPERTY IS NOT THE PRINCIPAL RESIDENCE OF AT LEAST ONE OTHER BORROWER.

4. A BORROWER DOES NOT PERFORM AN OBLIGATION UNDER THE MORTGAGE.

D. A REVERSE MORTGAGE DOES NOT BECOME DUE AND PAYABLE IF THE LEGAL TITLE TO THE PROPERTY IS HELD IN THE NAME OF A TRUST AND THE OCCUPANT OF THE PROPERTY USES THE PROPERTY AS A PRINCIPAL RESIDENCE AND IS A BENEFICIARY OF THAT TRUST.

E. THE CREDITOR'S OR THE CREDITOR'S ASSIGNEE'S RIGHT TO COLLECT THE OUTSTANDING BALANCE OF THE REVERSE MORTGAGE UNDER THE LOAN IS SUBJECT TO THE APPLICABLE STATUTE OF LIMITATIONS FOR WRITTEN LOAN CONTRACTS. NOTWITHSTANDING ANY OTHER LAW, THE STATUTE OF LIMITATIONS BEGINS ON EITHER OF THE FOLLOWING:

1. THE DATE THAT THE REVERSE MORTGAGE BECOMES DUE AND PAYABLE AS SPECIFIED IN THE AGREEMENT.

2. THE DATE THE CREDITOR OR THE CREDITOR'S ASSIGNEE ACCELERATES THE LOAN DUE TO THE BORROWER'S DEFAULT ON A PROVISION IN THE AGREEMENT.

6-1606. Borrower liability; prohibited practices; investments; annuities

A. THE BORROWER IS NOT LIABLE FOR ANY DIFFERENCE BETWEEN THE NET AMOUNT OF THE BORROWER'S REMAINING DEBT UNDER THE REVERSE MORTGAGE AND THE AMOUNT RECOVERED BY THE ORIGINATOR FROM THE NET SALES PROCEEDS FROM THE DWELLING THAT IS SUBJECT TO THE REVERSE MORTGAGE. THIS AMOUNT IS BASED ON THE AMOUNT OF THE ACCUMULATED EQUITY SELECTED BY THE BORROWER TO BE SUBJECT TO THE REVERSE MORTGAGE AS AGREED ON BY THE ORIGINATOR AND THE BORROWER.

B. AN ORIGINATOR SHALL NOT:

1. ENTER INTO ANY AGREEMENT THAT WOULD OBLIGATE THE BORROWER TO PURCHASE AN ANNUITY, AN INVESTMENT OR LONG-TERM CARE INSURANCE BEFORE THE CLOSING OF THE REVERSE MORTGAGE OR BEFORE THE EXPIRATION OF THE BORROWER'S RIGHT TO RESCIND THE REVERSE MORTGAGE AGREEMENT IF A RESCISSION PERIOD APPLIES.

2. REFER THE BORROWER TO ANYONE FOR THE PURCHASE OF AN ANNUITY BEFORE THE CLOSING OF THE REVERSE MORTGAGE OR BEFORE THE EXPIRATION OF THE BORROWER'S RIGHT TO RESCIND THE REVERSE MORTGAGE AGREEMENT.

C. THIS SECTION DOES NOT PREVENT A LENDER FROM OFFERING OR REFERRING BORROWERS FOR TITLE INSURANCE, HAZARD, FLOOD OR OTHER PERIL INSURANCE OR OTHER SIMILAR PRODUCTS THAT ARE CUSTOMARY AND NORMAL UNDER A REVERSE MORTGAGE LOAN.

6-1607. Enforcement

A. AN ACT OR PRACTICE IN VIOLATION OF THIS CHAPTER IS AN UNLAWFUL PRACTICE UNDER SECTION 44-1522 AND IS SUBJECT TO ENFORCEMENT THROUGH PRIVATE ACTION AND PROSECUTION BY THE ATTORNEY GENERAL.

B. ANY PROVISION OF A REVERSE MORTGAGE AGREEMENT THAT VIOLATES THIS CHAPTER IS UNENFORCEABLE AGAINST THE BORROWER.

C. A PRIVATE ACTION AGAINST AN ORIGINATOR SHALL BE COMMENCED SUBJECT TO THE APPLICABLE STATUTE OF LIMITATIONS FOR WRITTEN CONTRACTS.

D. THE REMEDIES PROVIDED IN THIS CHAPTER ARE NOT INTENDED TO BE THE EXCLUSIVE REMEDIES AVAILABLE TO THE BORROWER.

6-1608. Lien priority and validity

THE FULL AMOUNT SECURED BY A REVERSE MORTGAGE SECURITY INTEREST HAS THE SAME PRIORITY OVER ANY OTHER LIEN ON THE PROPERTY AS IF THE FULL AMOUNT HAD BEEN DISBURSED ON THE DATE OF THE LOAN CLOSING REGARDLESS OF THE ACTUAL DATE OF ANY DISBURSEMENT. THE AMOUNT SECURED BY THE SECURITY INTEREST SHALL INCLUDE ALL DIRECT PAYMENTS BY THE BORROWER TO THE CREDITOR OR THE CREDITOR'S ASSIGNEE AND ALL OTHER LOAN ADVANCES PERMITTED BY THE MORTGAGE FOR ANY PURPOSE INCLUDING LOAN ADVANCES FOR INTEREST, TAXES AND SPECIAL ASSESSMENTS, PREMIUMS FOR HAZARD OR MORTGAGE INSURANCE, SERVICING CHARGES AND COSTS OF COLLECTION, REGARDLESS OF WHEN THE PAYMENTS OR LOAN ADVANCES ARE MADE. THE PRIORITY PROVIDED BY THIS SECTION APPLIES NOTWITHSTANDING ANY OTHER LAW.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.