

Minnesota Senate File 2430

1.1 A bill for an act
1.2 relating to mortgages; regulating reverse mortgages; requiring certain notices
1.3 related to redemption rights be made to a mortgagor; providing for a private
1.4 right of action; modifying time for requesting a hearing on an order to secure
1.5 a building; modifying notice of sale requirements; authorizing political
1.6 subdivisions to recover costs associated with obtaining a five-week redemption
1.7 period; amending Minnesota Statutes 2008, sections 47.58, subdivisions 3, 8, by
1.8 adding subdivisions; 580.03; 580.041, as amended; 580.06; 580.30, subdivision
1.9 1; 582.03, subdivision 1; 582.032, by adding a subdivision; Minnesota Statutes
1.10 2009 Supplement, sections 47.58, subdivision 1; 463.251, subdivision 3;
1.11 proposing coding for new law in Minnesota Statutes, chapter 58.

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

1.13 Section 1. Minnesota Statutes 2009 Supplement, section 47.58, subdivision 1, is
1.14 amended to read:

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

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

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

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

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

2.1 (b) "Lender" means any bank subject to chapter 48, credit union subject to chapter
2.2 52, savings bank organized and operated pursuant to chapter 50, savings association
2.3 subject to chapter 51A, any residential mortgage originator subject to chapter 58, or any
2.4 insurance company as defined in section 60A.02, subdivision 4. "Lender" also includes
2.5 any federally chartered bank supervised by the comptroller of the currency or federally
2.6 chartered savings association supervised by the Federal Home Loan Bank Board or
2.7 federally chartered credit union supervised by the National Credit Union Administration,
2.8 to the extent permitted by federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.2 (5) A single service charge, which service charge shall include any consideration,
3.3 not otherwise specified in this section as an "actual closing cost," paid by the borrower to
3.4 the lender for or in relation to the acquisition, making, refinancing or modification of a
3.5 reverse mortgage loan, and shall also include any consideration received by the lender
3.6 for making a commitment for a reverse mortgage loan, whether or not an actual loan
3.7 follows the commitment. The service charge shall not exceed one percent of the bona fide
3.8 committed principal amount of the reverse mortgage loan.

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

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

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

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

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

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

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

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

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

4.1 provided the revised outstanding loan balance at payment of the lender's final installment
4.2 of committed principal does not exceed 80 percent of the reappraised value of the property.

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

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

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

4.15 (2) receive a certification from the applicant or the applicant's authorized
4.16 representative that the applicant has received counseling as defined in this subdivision
4.17 from an independent housing counseling agency. The certification must be signed by the
4.18 mortgagor applicant and the counselor from the independent agency and must include the
4.19 date of the counseling, and the name, address, and telephone number of both the mortgagor
4.20 and the organization providing counseling; counselor from the independent agency and
4.21 the applicant. The lender shall maintain the certification in an accurate, reproducible, and
4.22 accessible format for the term of the reverse mortgage. A failure by the lender to comply
4.23 with this subdivision results in a \$1,000 civil penalty payable to the mortgagor borrower.

4.24 For the purposes of this subdivision:

4.25 (i) "independent counseling agency" means an agency approved by the United States
4.26 Department of Housing and Urban Development, domiciled in Minnesota, to provide loan
4.27 counseling that has no business relationship with the lender and, except for an authorized
4.28 foreclosure prevention counseling agency, as defined in section 580.021, subdivision 2,
4.29 neither makes loans nor refers borrowers to any person or entity that makes loans; and

4.30 (ii) "counseling" means that during a session, which must be no less than 60 minutes,
4.31 the following services are provided to the borrower:

4.32 ~~(1) (A)~~ (A) a review of the advantages and disadvantages of a reverse mortgage
4.33 programs loan;

4.34 ~~(2) an explanation of how the reverse mortgage affects the borrower's estate and~~
4.35 ~~public benefits;~~

- 5.1 (3) an explanation of the lending process;
5.2 (4) a discussion of the borrower's supplemental income needs; and
5.3 (5) an opportunity to ask questions of the counselor.
5.4 (B) a discussion of the borrower's finances, assets, liabilities, expenses, and income
5.5 needs and a review of options other than a reverse mortgage loan that are available to the
5.6 borrower, including other housing, social services, health, and financial options;
5.7 (C) a review of other home equity conversion or other loan options that are or may
5.8 become available to the borrower;
5.9 (D) an explanation of the financial implication of entering into a reverse mortgage
5.10 loan, including the costs of the loan;
5.11 (E) an explanation that a reverse mortgage loan may have tax consequences, affect
5.12 eligibility for assistance under federal and state programs, and have an impact on the
5.13 estate and heirs of the borrower;
5.14 (F) an explanation of the lending process;
5.15 (G) an opportunity for the borrower to ask questions of the counselor;
5.16 (H) an explanation that:
5.17 (aa) the lender may not condition a reverse mortgage loan on the purchase of an
5.18 annuity, investment, life insurance, or long-term care insurance product; and
5.19 (bb) a reverse mortgage loan cannot obligate the borrower to purchase an annuity,
5.20 investment, life insurance, or long-term care insurance product; and
5.21 (I) notification to the borrower that, following the receipt of a written commitment
5.22 to make a reverse mortgage loan and prior to the expiration of the seven-day cooling off
5.23 period provided under subdivision 10, the borrower may seek additional information and
5.24 an analysis of the commitment from the counselor.

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

5.27 Subd. 9. **Lender default; forfeiture.** A lender who fails to make loan advances
5.28 as required in the loan documents, and fails to cure an actual default after notice as
5.29 specified in the loan documents, shall forfeit any right to repayment of the outstanding
5.30 loan balance with respect to a mortgage that is not federally insured. Any mortgage that is
5.31 not federally insured securing a reverse mortgage loan agreement in which a forfeiture
5.32 has occurred pursuant to this subdivision may be declared null and void by a court of
5.33 competent jurisdiction.

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

6.3 Subd. 10. Seven-day cooling off period; right of rescission. (a) A borrower shall
6.4 not be bound for seven days after the borrower's acceptance, in writing, of the lender's
6.5 written commitment to make the reverse mortgage loan, and cannot be required to close
6.6 or proceed with the loan during that time period. The lender shall provide the borrower
6.7 with written notice of the seven-day cooling off period, which must be on a separate
6.8 sheet of paper and in at least ten-point type. A borrower may not waive the provisions of
6.9 this paragraph.

6.10 (b) The borrower may rescind any reverse mortgage loan within three days of
6.11 execution, as provided in Code of Federal Regulations, Regulation Z.

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

6.14 Subd. 11. Sales of insurance products in connection with reverse mortgage loan
6.15 transactions. No lender, mortgage broker, or residential mortgage originator may:

6.16 (1) require the purchase of an annuity, investment, life insurance, or long-term care
6.17 insurance product as a condition of obtaining a reverse mortgage loan;

6.18 (2) enter into any agreement to make a reverse mortgage loan that obligates the
6.19 borrower to purchase an annuity, investment, life insurance, or long-term care insurance
6.20 product; or

6.21 (3) receive compensation for providing the borrower with information relating to an
6.22 annuity, investment, life insurance, or long-term care insurance product.

6.23 For the purposes of this subdivision, "mortgage broker" has the meaning given in
6.24 section 58.02, subdivision 13, and "residential mortgage originator" has the meaning given
6.25 in section 58.02, subdivision 19.

6.26 Sec. 7. **[58.19] REVERSE MORTGAGE LOANS COORDINATION WITH**
6.27 **CHAPTER 47.**

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

6.32 Sec. 8. Minnesota Statutes 2009 Supplement, section 463.251, subdivision 3, is
6.33 amended to read: