

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***Jan Lynn Owen**

Commissioner of Business Oversight



June 22, 2017

Re: Request for Interpretive Opinion Regarding Reverse Mortgage Applications Under the California Residential Mortgage Lenders Act

Dear _____:

Thank you for your e-mail to the Department of Business Oversight ("Department"). As Senior Counsel in the Legal Division, the Commissioner requested that I respond to this matter. In your e-mail, you request guidance from the Department regarding whether a lender may take a reverse mortgage loan application prior to the expiration of the seven-day cooling off period after a borrower receives counseling, pursuant to California Civil Code section 1923.2, subdivision (k) ("Section 1923.2(k)"). You additionally seek guidance on whether there are specific documents that must be signed by the borrower prior to taking an application. The Department provides the following guidance.

A lender may accept an initial or preliminary application before the expiration of the seven-day cooling off period.

Section 1923.2(k) prohibits a lender from accepting a "final and complete" application for a reverse mortgage loan from a prospective applicant until seven days after the applicant completes counseling on whether a reverse mortgage is an appropriate product for the prospective applicant.¹ However, the section does not prohibit a lender from accepting initial or preliminary applications before the seven day period (also referred to as a "cooling off" period) expires. A lender may accept an initial or preliminary application, but may not process the application other than undertaking specified activities, before the expiration of

¹ The Department does not have authority to provide interpretive opinions on provisions in the Civil Code, and therefore this guidance is solely for purposes of a licensee's compliance with the California Finance Lenders Law and the California Residential Mortgage Lending Act.

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the cooling off period. A lender may perform any of the following activities before the expiration of the cooling off period:

- 1) Explain the reverse mortgage to the prospective client;
- 2) Order a credit report to perform a preliminary credit review of the borrower's financing obligations;
- 3) Discuss whether the prospective borrower is eligible;
- 4) Provide information regarding the fees and charges associated with the reverse mortgage;
- 5) Describe the potential financial implications of a reverse mortgage loan for the client;
- 6) Provide the borrower with copies of the mortgage, note, and Loan Agreement;
- 7) Use automated valuation models (AVMs) to perform a preliminary estimation of the value of the property; and
- 8) Order a preliminary title search.²

The prohibition on processing the application means, among other things, that a lender may not order an appraisal, title search, or FHA case number, before a potential borrower completes the required counseling and the cooling off period expires.

A counseling certification must be signed by a borrower prior to a lender receiving a final and complete application, and other documents must be provided to a borrower before a lender may accept an initial application.

Signed counseling certification. A lender may not accept a final and complete application from an applicant until the lender obtains from the applicant a signed certification that the applicant has received counseling from an approved counseling agency. (Civ. Code, § 1923.2(k).) The counseling certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the name, address, and telephone number of both the counselor and the applicant. However, a lender may accept an initial application from a borrower prior to the receipt of a signed counseling certification, provided that the lender has provided to the borrower the additional documents required by law. A lender who accepts an initial application may not process the application except for undertaking the limited activities described above.

Notice. Civil Code section 1923.5 requires a lender to provide a loan applicant with a notice prior to taking an initial loan application. The text of the notice is set forth in subdivision (a) of that section, and attached to this letter. A lender is not required to obtain an applicant's signature on the notice before accepting an application.

Worksheet. Civil Code section 1923.5 requires a lender to provide a prospective borrower with a reverse mortgage worksheet guide prior to taking an initial loan application. The text of the worksheet is set forth in subdivision (b) of the section, and attached to this letter. A lender is not required to obtain an applicant's signature on the worksheet before accepting an application. However, the worksheet guide must be signed by the counselor if the

² HUD Mortgage Letters 2004-25, 2006-25 and 2014-21.

counseling is done in person, signed by the applicant, and returned to the lender, before the approval of the loan application.

List of 10 or more counseling agencies. Prior to accepting a final and complete application, a lender must provide an applicant with a list of 10 or more counseling agencies that are approved by HUD, pursuant to Civil Code section 1923.2(j). However, a lender may receive an initial application prior to providing the list. A lender is not required to obtain the applicant's signature on the list. Although a lender may accept an initial application, a lender may not process the application, other than completing the activities listed above, until after providing the list of 10 or more counseling agencies, and until the expiration of the seven-day cooling off period.

In sum, the documents that must be provided to a borrower are as follows:

Before taking an initial application

- (1) The Important Notice to Reverse Mortgage Loan Applicant
- (2) Reverse Mortgage Worksheet Guide—Is a Reverse Mortgage Right for Me?

Before accepting a final and complete application

- (1) List of 10 or more HUD approved counseling agencies

The documents that must be signed by a borrower are as follows:

Before accepting a final and complete application

- (1) A counseling certification signed by the borrower and the counselor, as specified.

Lastly, the restriction on accepting a "final and complete application" means that a lender may not process an initial or preliminary application, except for the limited authorized activities described on page 1, until the expiration of the seven-day cooling off period.

If you have any further questions, please contact me at _____.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By
Sherri Kaufman
Senior Counsel

**IMPORTANT NOTICE
TO REVERSE MORTGAGE LOAN APPLICANT**

A REVERSE MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION. IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE. IT IS THEREFORE IMPORTANT TO UNDERSTAND THE TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT ON YOUR FUTURE NEEDS. BEFORE ENTERING INTO THIS TRANSACTION, YOU ARE REQUIRED TO CONSULT WITH AN INDEPENDENT REVERSE MORTGAGE LOAN COUNSELOR TO DISCUSS WHETHER OR NOT A REVERSE MORTGAGE IS RIGHT FOR YOU. A LIST OF APPROVED COUNSELORS WILL BE PROVIDED TO YOU BY THE LENDER.

SENIOR CITIZEN ADVOCACY GROUPS ADVISE AGAINST USING THE PROCEEDS OF A REVERSE MORTGAGE TO PURCHASE AN ANNUITY OR RELATED FINANCIAL PRODUCTS. IF YOU ARE CONSIDERING USING YOUR PROCEEDS FOR THIS PURPOSE, YOU SHOULD DISCUSS THE FINANCIAL IMPLICATIONS OF DOING SO WITH YOUR COUNSELOR AND FAMILY MEMBERS.

Reverse Mortgage Worksheet Guide—Is a Reverse Mortgage Right for Me?

To decide if a recommended purchase of a reverse mortgage is right for you, consider all of your goals, needs, and available options. This self-evaluation worksheet has five essential questions for you to consider when deciding if a reverse mortgage is right for you.

Directions: The State of California advises you to carefully read and complete this worksheet, and bring it with you to your counseling session. You may make notes on a separate piece of paper with questions you may have about whether a reverse mortgage is right for you. During the counseling session, you can speak openly and confidentially with a professional reverse mortgage counselor, independent of the lender, who can help you understand what it means for you to become involved with this particular loan.

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

Rule: When the borrower dies, moves, or is absent from the home for 12 consecutive months, the loan may become due.

Considerations: Having a reverse mortgage affects the future of all those living with you. If the loan cannot be paid off, then the home will have to be sold in order to satisfy the lender. To determine if this is an issue for you, ask yourself:

(A) Who is currently living in the home with you?

(B) What will they do when you die or permanently move from the home?

(C) Have you discussed this with all those living with you or any family members?

(D) Who will pay off the loan, and have you discussed this with them?

(E) If your heirs do not have enough money to pay off the loan, the home will pass into foreclosure.

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

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

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

Considerations: Will you have adequate resources and income to support your financial needs and obligations once you have removed all of your available equity with a reverse mortgage? To determine if this is an issue for you, ask yourself:

(A) Are you contemplating a lump-sum withdrawal?

(B) What other resources will you have once you have reached your equity withdrawal limit?

(C) Will you have funds to pay for unexpected medical expenses?

(D) Will you have the ability to finance alternative living accommodations, such as independent living, assisted living, or a long-term care nursing home?

(E) Will you have the ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the mortgage becomes payable?

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

3. Have you fully explored other options?

Rule: Less costly options may exist.

Consideration: Reverse mortgages are compounding-interest loans, and the debt to the lender increases as time goes on. You may want to consider using less expensive alternatives or other assets you may have before you commit to a reverse mortgage. To determine if this is an issue for you, consider:

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

(B) Other types of lending arrangements may be available and less costly. You may be able to use your home equity to secure loans from family members, friends, or would-be heirs.

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

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

Rule: Reverse mortgages are interest-accruing loans.

Considerations: Due to the high cost and increasing debt incurred by reverse mortgage borrowers, using home equity to finance investments is not suitable in most instances. To determine if this is an issue for you, consider:

(A) The cost of the reverse mortgage loan may exceed any financial gain from any product purchased.

(B) Will the financial product you are considering freeze or otherwise tie up your money?

(C) There may be high surrender fees, service charges, or undisclosed costs on the financial products purchased with the proceeds of a reverse mortgage.

(D) Has the sales agent offering the financial product discussed suitability with you?
Do you need to discuss this with your counselor? Yes or No

5. Do you know that a reverse mortgage may impact your eligibility for government assistance programs?

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

Considerations: Converting your home equity into investments may create nonexempt asset statuses. To determine if this is an issue for you, consider:

(A) There are state and federal taxes on the income investments financed through home equity.

(B) If you go into a nursing home for an extended period of time, the reverse mortgage loan will become due, the home may be sold, and any proceeds from the sale of the home may make you ineligible for government benefits.

(C) If the homeowner is a Medi-Cal beneficiary, a reverse mortgage may make it difficult to transfer ownership of the home, thus resulting in Medi-Cal recovery.

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