

Regular Session, 2010

HOUSE BILL NO. 792

BY REPRESENTATIVE RICHMOND

MORTGAGES: Provides for regulation of reverse mortgage lending

1 AN ACT

2 To enact R.S. 6:1083(24) and Part IV of Chapter 14 of Title 6 of the Louisiana Revised  
3 Statutes of 1950, to be comprised of R.S. 6:1101 through 1104, relative to reverse  
4 mortgages; to provide for a definition of reverse mortgage loan; to provide for  
5 requirements on reverse mortgage loans; to provide for counseling; to provide for  
6 rescission of a reverse mortgage loan; to provide for duties for elders regarding  
7 reverse mortgage loans; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 6:1083(24) and Part IV of Chapter 14 of Title 6 of the Louisiana  
10 Revised Statutes of 1950, comprised of R.S. 6:1101 through 1104, is hereby enacted to read  
11 as follows:

12 §1083. Definitions

13 As used in this Chapter:

14 \* \* \*

15 (24) "Reverse mortgage loan" means a nonrecourse loan secured by real  
16 property that meets all of the following criteria:

17 (a) The loan provides cash advances to a borrower based on the equity or the  
18 value in a borrower's inhabited principal domicile.

19 (b) The loan requires no payment of principal or interest until the entire loan  
20 becomes due and payable.

21 \* \* \*

1                                    PART IV. REVERSE MORTGAGE LOANS2                    §1101. Reverse mortgages; requirements3                    A. A reverse mortgage loan shall comply with all of the following  
4                    requirements:5                    (1) Prepayment, in whole or in part, shall be permitted without penalty at any  
6                    time during the term of the reverse mortgage loan. For the purposes of this Section,  
7                    "penalty" shall not include any fees, payments, or other charges that would have  
8                    otherwise been due upon the reverse mortgage being due and payable.9                    (2) A reverse mortgage loan may provide for a fixed or adjustable interest  
10                   rate or combination thereof, including compound interest, and may also provide for  
11                   interest that is contingent on the value of the property upon execution of the loan or  
12                   at maturity, or on changes in value between closing and maturity.13                   (3) A reverse mortgage may include costs and fees that are charged by the  
14                   reverse mortgage lender, or the reverse mortgage lender's designee, originator, or  
15                   servicer, including costs and fees charged upon execution of the loan, on a periodic  
16                   basis, or upon maturity.17                   (4) If a reverse mortgage loan provides for periodic advances to a borrower,  
18                   these advances shall not be reduced in amount or number based on any adjustment  
19                   in the interest rate.20                   B. A reverse mortgage loan may become due and payable upon one of the  
21                   following occurrences:22                   (1) The property securing the loan is sold or title to the home is otherwise  
23                   transferred.24                   (2) Any fixed maturity date agreed to by the lender and the borrower occurs.25                   (3) An event occurs which is specified in the loan documents and which  
26                   jeopardizes the lender's security.27                   C. Repayment of the reverse mortgage loan shall be subject to the following  
28                   conditions:

1           (1) Temporary absences from the home not exceeding sixty consecutive days  
2           shall not cause the mortgage to become due and payable.

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

7           (3) A reverse mortgage lender shall prominently disclose in the loan  
8           agreement any interest rate or other fees to be charged during the period that  
9           commences on the date that the reverse mortgage loan becomes due and payable, and  
10          that ends when repayment in full is made.

11          D. The first page of any deed of trust securing a reverse mortgage loan shall  
12          contain the following statement in ten-point boldface type: "This deed of trust  
13          secures a reverse mortgage loan".

14          E. A reverse mortgage lender shall not require an applicant for a reverse  
15          mortgage loan to purchase an annuity as a condition of obtaining a reverse mortgage  
16          loan. A reverse mortgage lender or broker arranging a reverse mortgage loan shall  
17          not:

18                 (1) Offer an annuity to the borrower prior to the closing of the reverse  
19                 mortgage or before the expiration of the right of the borrower to rescind the reverse  
20                 mortgage agreement.

21                 (2) Refer the borrower to anyone for the purchase of an annuity prior to the  
22                 closing of the reverse mortgage or before the expiration of the right of the borrower  
23                 to rescind the reverse mortgage agreement.

24          §1102. Counseling

25                 A.(1) Prior to accepting a final and complete application for a reverse  
26                 mortgage loan or assessing any fees, a reverse mortgage lender shall provide the  
27                 prospective borrower with a list of all nonprofit counseling agencies in the state that  
28                 have been approved by the United States Department of Housing and Urban  
29                 Development for counseling. The counseling agencies shall meet the standards and

1 requirements established by the United States Department of Housing and Urban  
2 Development for reverse mortgage counseling.

3 (2) A reverse mortgage lender shall not refer a prospective borrower to a  
4 counseling agency. A reverse mortgage lender shall not pay any counseling service  
5 fees without first informing the prospective borrower in writing that this may create  
6 a conflict of interest. A reverse mortgage lender shall disclose to the prospective  
7 borrower in writing any other payment arrangements or business affiliations between  
8 the lender and a counseling agency.

9 B. A reverse mortgage lender shall not accept a final and complete  
10 application for a reverse mortgage loan from a prospective applicant or assess any  
11 fees upon a prospective applicant without first receiving a certification from the  
12 applicant or the applicant's authorized representative that the applicant has received  
13 counseling from an agency described in Subsection A of this Section. The  
14 certification shall be signed by the borrower and the agency counselor, and shall  
15 include the date of the counseling and the name, address, and telephone number of  
16 both the borrower and the counselor. Electronic facsimile copy of the housing  
17 counseling certification satisfies the requirements of this Section.

18 §1103. Rescission

19 The borrower may rescind any reverse mortgage within thirty days of  
20 execution by providing written notice to the reverse mortgage lender. Any payments  
21 received in connection with the reverse mortgage shall be returned within fifteen  
22 days of rescission.

23 §1104. Reverse mortgage lender; duties to elders

24 A. In addition to any other obligation under law, any reverse mortgage  
25 lender who offers, sells, or arranges the sale of a reverse mortgage to an elder, owes  
26 to that elder a fiduciary duty, including the duty to act in the best interest of the elder,  
27 with the utmost care, honesty, and undivided loyalty, diligence, and good faith  
28 toward the elder, as well as the duty of timely and clear disclosure of all material  
29 information that might reasonably affect the elder's rights or interests or the elder's

1 ability to receive the intended benefit of the transaction. For the purposes of this  
2 Section, "elder" means any person sixty years of age or older.

3 B. In determining whether a person has breached the fiduciary duty  
4 described in Subsection A of this Section, the reverse mortgage lender shall have  
5 discussed and considered with the borrower the following:

6 (1) The age and life expectancy of the prospective borrower and how this  
7 would impact the total annual loan cost.

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

12 (3) Whether the borrower intends to use the proceeds of the reverse  
13 mortgage to purchase annuities or other financial products and the suitability of  
14 using reverse mortgage proceeds to purchase the annuity or other financial products.

15 (4) Whether a person or entity other than the reverse mortgage lender  
16 recommended the reverse mortgage for the purpose of purchasing an annuity or other  
17 financial product.

18 (5) Whether the lender complied with all requirements of state and federal  
19 law and industry standards.

20 (6) Any other factors that are determined relevant in light of the totality of  
21 the circumstances.

22 C. In addition to any other civil remedies provided by law, a person who  
23 breaches the fiduciary duty described in this Section shall be liable to the borrower  
24 for any damages including attorney's fees and costs proximately caused by the  
25 breach of fiduciary duty.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Richmond

HB No. 792

**Abstract:** Provides for regulation of reverse mortgages.

Proposed law provides for a definition of "reverse mortgage".

Proposed law requires reverse mortgage loans to comply with all of the following:

- (1) Prepayment, in whole or in part, shall be permitted without penalty at any time during the term of the reverse mortgage loan.
- (2) A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.
- (3) A reverse mortgage may include costs and fees that are charged by the reverse mortgage lender, or the reverse mortgage lender's designee, originator, or servicer, including costs and fees charged upon execution of the loan, on a periodic basis, or upon maturity.
- (4) If a reverse mortgage loan provides for periodic advances to a borrower, these advances shall not be reduced in amount or number based on any adjustment in the interest rate.

Proposed law allows for a reverse mortgage loan to become due on the following:

- (1) The property securing the loan is sold or title to the home is otherwise transferred.
- (2) Any fixed maturity date agreed to by the lender and the borrower occurs.
- (3) An event occurs which is specified in the loan documents and which jeopardizes the lender's security.

Proposed law provides for the following conditions on repayment of reverse mortgage loans:

- (1) Temporary absences from the home not exceeding 60 consecutive days shall not cause the mortgage to become due and payable.
- (2) Extended absences from the home exceeding 60 consecutive days, but less than one year, shall not cause the mortgage to become due and payable if the borrower has taken prior action which secures and protects the home in a manner satisfactory to the lender, as specified in the loan amounts.
- (3) A reverse mortgage lender shall prominently disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

Proposed law requires the first page of any deed of trust securing a reverse mortgage loan to contain the following statement in 10-point boldface type: "This deed of trust secures a reverse mortgage loan".

Proposed law provides that a reverse mortgage lender shall not require an applicant for a reverse mortgage loan to purchase an annuity as a condition of obtaining a reverse mortgage loan. A reverse mortgage lender or broker arranging a reverse mortgage loan shall not:

- (1) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.
- (2) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement.

Proposed law requires that, prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, a reverse mortgage lender provide the prospective borrower with a list of all nonprofit counseling agencies in the state that have been approved by the H.U.D. for counseling. The counseling agencies shall meet the standards and requirements established by the H.U.D. for reverse mortgage counseling.

Proposed law prohibits a reverse mortgage lender from referring a prospective borrower to a counseling agency. The reverse mortgage lender shall not pay any counseling service fees without first informing the prospective borrower in writing that this may create a conflict of interest. A reverse mortgage lender shall disclose to the prospective borrower in writing any other payment arrangements or business affiliations between the lender and a counseling agency.

Proposed law prohibits a reverse mortgage lender from accepting a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency.

Proposed law allows the borrower to rescind any reverse mortgage within 30 days of execution by providing written notice to the reverse mortgage lender. Any payments received in connection with the reverse mortgage shall be returned within 15 days of rescission.

Proposed law provides that any reverse mortgage lender who offers, sells, or arranges the sale of a reverse mortgage to an elder, owes to that elder a fiduciary duty, including the duty to act in the best interest of the elder, with the utmost care, honesty, and undivided loyalty, diligence, and good faith toward the elder, as well as the duty of timely and clear disclosure of all material information that might reasonably affect the elder's rights or interests or the elder's ability to receive the intended benefit of the transaction.

Proposed law provides that when determining whether a person has breached the fiduciary duty, the reverse mortgage lender shall have discussed and considered with the borrower the following:

- (1) The age and life expectancy of the prospective borrower and how this would impact the total annual loan cost.
- (2) The extent to which the prospective borrower's financial needs would be better met by options other than a reverse mortgage including but not limited to less costly home equity lines of credit, property tax deferral programs, or governmental aid programs.

- (3) Whether the borrower intends to use the proceeds of the reverse mortgage to purchase annuities or other financial products and the suitability of using reverse mortgage proceeds to purchase the annuity or other financial products.
- (4) Whether a person or entity other than the reverse mortgage lender recommended the reverse mortgage for the purpose of purchasing an annuity or other financial product.
- (5) Whether the lender complied with all requirements of state and federal law and industry standards.
- (6) Any other factors that are determined relevant in light of the totality of the circumstances.

Proposed law provides for civil penalties on a person who breaches the fiduciary duty to an elder.

(Amends R.S. 6:1083(24); Adds R.S. 6:1101-1104)