

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 774

BY: KERR

AS INTRODUCED

AN ACT RELATING TO BANKING; PROVIDING SHORT TITLE;  
DEFINING TERMS; AUTHORIZING CERTAIN LENDERS TO  
ENGAGE IN REVERSE MORTGAGE LOANS AND REQUIRING  
OTHER LENDERS BE APPROVED BY STATE BANK  
COMMISSIONER; REQUIRING CERTAIN APPLICATION AND  
NOTICE OF INTENT; PROVIDING FOR NOTICE OF AUTHORITY  
AND RELATED FEE; REQUIRING AUTHORIZED LENDERS  
COMPLY WITH ACT AND RULES; PROVIDING FOR AGREEMENT  
ON INTEREST RATE TO BE PAID AND FOR DETERMINATION  
OF EXCESSIVE INTEREST RATE; PROVIDING FOR AGREEMENT  
THAT CERTAIN TAXES AND PAYMENTS ARE OBLIGATION OF  
BORROWER AND FAILURE TO PAY MAY BE GROUNDS FOR  
DEFAULT; PROVIDING FOR AGREEMENT THAT LENDER MAY  
CHOOSE TO PAY CERTAIN TAXES AND PAYMENTS WHICH  
BORROWER FAILS TO PAY, CHARGE SAME TO LOAN AND  
RECALCULATE LOAN PAYMENTS; PROVIDING FOR FEE FOR  
RECALCULATION OF PAYMENTS; PROVIDING METHOD FOR  
CALCULATING OUTSTANDING LOAN BALANCE; ALLOWING  
PREPAYMENT OF LOAN WITHOUT PENALTY; STATING AMOUNT  
OWED BY BORROWER UNDER CERTAIN CONDITIONS;  
AUTHORIZING ENFORCEMENT OF DEBT THROUGH SALE OF  
PROPERTY AND PROHIBITING DEFICIENCY JUDGMENT  
AGAINST BORROWER; REQUIRING LENDERS PROVIDE CERTAIN  
INFORMATION TO COMMISSIONER; REQUIRING LENDERS

PROVIDE LOAN APPLICANT WITH CERTAIN INFORMATION;  
REQUIRING LENDER PROVIDE CERTAIN INFORMATION AT  
CLOSING AND ANNUALLY THEREAFTER; REQUIRING LENDER  
PROVIDE STATEMENT OF ACCOUNT AND STATING  
INFORMATION TO BE INCLUDED; STATING CONDITION  
DEEMED TO BE LENDER DEFAULT; REQUIRING LENDER  
FORFEIT CERTAIN CHARGES; LIMITING CERTAIN RIGHT AND  
PROVIDING FOR OTHER PENALTIES FOR LENDER DEFAULT;  
MAKING PROVISION INAPPLICABLE UNDER CERTAIN  
CONDITION; LIMITING CONTRACT TO CERTAIN TERMS AND  
CONDITIONS FOR BORROWER DEFAULT; REQUIRING CERTAIN  
NOTICE OF FORECLOSURE UNDER CERTAIN CONDITIONS AND  
PROVIDING FOR ACCRUAL OF INTEREST DURING NOTICE  
PERIOD; REQUIRING COMMISSIONER ADOPT RULES FOR  
COUNSELOR TRAINING, MAINTAIN LIST OF APPROVED  
COUNSELORS AND PROVIDE CERTAIN INFORMATION;  
PROHIBITING CERTAIN ACTS BY LENDERS; REQUIRING  
COMMISSIONER ADOPT CERTAIN RULES; PROVIDING FOR  
CEASE AND DESIST ORDER, ADMINISTRATIVE FINE AND  
REVOCATION OF CERTAIN AUTHORITY; PROVIDING FOR  
PRIVATE CAUSE OF ACTION AND AWARDING OF CERTAIN  
ATTORNEY FEES; CONSTRUING ACT; PROVIDING FOR  
CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 431 of Title 6, unless there is  
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Reverse  
Mortgage Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 432 of Title 6, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Authorized lender" or "lender" means any lender authorized to engage in business as a bank, savings institution or credit union under the laws of this state or of the United States, or any other person, firm or corporation authorized to make reverse mortgage loans by the State Bank Commissioner;

2. "Borrower" means a natural person sixty-two (62) years of age or older who occupies and owns, in fee simple individually, or with another borrower as tenants by the entirety or as joint tenants with right of survivorship, an interest in residential real property securing a reverse mortgage loan, and who borrows money under a reverse mortgage loan;

3. "Commissioner" means the State Bank Commissioner;

4. "Counselor" means an individual who has completed a training curriculum on reverse mortgage counseling approved by the Commissioner and whose name is maintained on the Commissioner's list of approved reverse mortgage counselors;

5. "Outstanding balance" means the current net amount of money owed by the borrower to the lender, calculated in accordance with the provisions of subsection B of Section 7 of this act, whether or not the sum is suspended under the terms of the reverse mortgage loan agreement or is immediately due and payable;

6. "Reverse mortgage loan" or "loan" means a loan for a definite or indefinite term that:

- a. is secured by a first mortgage or first deed of trust on the principal residence of the mortgagor,
- b. the proceeds of which are disbursed to the mortgagor in one or more lump sums, or in equal or unequal

installments, either directly by the lender or the lender's agent, and

- c. requires no repayment until a future time, upon the earliest occurrence of one or more events specified in the reverse mortgage loan contract;

7. "Shared appreciation" means an agreement by the lender and the borrower that, in addition to any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of any net appreciated value of the property during the term of the reverse mortgage loan; and

8. "Total annual percentage rate" means the annual average rate of interest, which provides the total amount owed at loan maturity when this rate is applied to the loan advances, excluding closing costs not paid to third parties, over the term of the reverse mortgage loan.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 433 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. No person, firm or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized lender by the State Bank Commissioner, unless the lender is a bank, savings institution, or credit union authorized to do business under the laws of this state or authorized to do business under the laws of the United States and chartered to do business in this state.

B. An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are required by the

Commissioner. The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of Five Hundred Dollars (\$500.00).

C. Any bank, savings institution or credit union that is not required to obtain authorization to make reverse mortgage loans under subsection A of this section shall, prior to making any reverse mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans. This notification shall be made on a form prescribed by the Commissioner and shall contain all information required by the Commissioner.

D. The Commissioner shall, upon determination that a lender should be authorized to make reverse mortgage loans, issue notice of this authority to the lender. The authority to issue reverse mortgage loans is valid for the period of time specified by the Commissioner. A lender to whom a notice of authority is issued shall display the notice prominently in any and all offices of the lender that make reverse mortgage loans. Authorizations issued under this section are nontransferable and subject to an annual fee of Two Hundred Fifty Dollars (\$250.00).

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 434 of Title 6, unless there is created a duplication in numbering, reads as follows:

In addition to the provisions of this act, authorized lenders shall comply with rules adopted by the State Bank Commissioner that are necessary to effectuate the purposes of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 435 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provisions of law to the contrary, the parties to a reverse mortgage loan may contract for the payment of interest at a rate agreed to by the parties. Interest shall be deferred until the earliest occurrence of one or more events

specified in the reverse mortgage loan contract. Payment of interest on deferred interest shall be as agreed upon by the parties to the contract. The parties may agree that the deferred interest may be added to the outstanding balance of the loan.

B. The State Bank Commissioner may determine that the total annual percentage rate is excessive. If the Commissioner determines a total annual percentage rate to be excessive, that determination shall be included in the information provided to counselors and to applicants for reverse mortgage loans.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 436 of Title 6, unless there is created a duplication in numbering, reads as follows:

Upon the agreement of the borrower and the lender:

1. A reverse mortgage loan contract may provide that it is the primary obligation of the borrower to pay all property taxes, insurance premiums and assessments in a timely manner, and that the failure of the borrower to make these payments and to provide evidence of payment to the lender may constitute grounds for default of the loan; or

2. A reverse mortgage loan contract may state that if a borrower fails to pay property taxes, insurance premiums or assessments, the lender may choose, at the lender's option, to pay the amounts due, charge them to the reverse mortgage loan, and recalculate regularly scheduled payments under the loan to account for the increased outstanding loan balance.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 437 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. If a reverse mortgage loan contract allows for a change in the payments or payment options, the lender may charge a reasonable fee when payments are recalculated.

B. The outstanding loan balance shall be calculated by adding the current totals of items described in paragraphs 1 through 4 of this subsection, and subtracting the current totals of all reverse mortgage loan payments made by the borrower to the lender:

1. The sum of all disbursements made by the lender to the borrower, or to another party on the borrower's behalf;

2. All taxes, assessments, insurance premiums and other similar charges paid to date by the lender pursuant to the provisions of Section 6 of this act and not reimbursed by the borrower within sixty (60) days of the date payment was made by the lender;

3. All actual closing costs the borrower has deferred, if a deferral provision is contained in the loan agreement; and

4. The total accrued interest to date.

C. Prepayment of the reverse mortgage loan, in whole or part, shall be permitted, without penalty, at any time during the term of the loan.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 438 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. When a reverse mortgage loan becomes due, if the borrower mortgaged one hundred percent (100%) of the full value of the house, then the amount owed by the borrower shall not be greater than the lesser of:

1. The fair market value of the house, minus sale costs; or
2. The outstanding balance of the loan.

B. If the borrower mortgaged less than one hundred percent (100%) of the full value of the house, the amount owed by the borrower shall not be greater than the lesser of:

1. The outstanding balance of the loan; or
2. The percentage of the fair market value, minus sale costs, as provided in the contract.

C. The lender shall enforce the debt only through the sale of the property and shall not obtain a deficiency judgment against the borrower.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 439 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. On forms prescribed by the State Bank Commissioner, all authorized lenders shall provide all of the following information to the Commissioner for dissemination to all counselors who provide counseling to prospective reverse mortgage borrowers:

1. The borrower's rights, obligations and remedies with respect to the borrower's temporary absence from the home, late payments by the lender and payment default by the lender;

2. Conditions or events that require the borrower to repay the loan obligation;

3. The right of the borrower to mortgage less than the full value of the home, if permitted by the reverse mortgage loan contract;

4. The projected total annual percentage rate applicable under various loan terms and appreciation rates and interest rates applicable at sample ages of borrowers;

5. Standard closing costs;

6. All service fees to be charged during the term of the loan;  
and

7. Other information required by the Commissioner.

B. Within ten (10) business days after application is made by a borrower, but not less than twenty (20) business days before closing of the loan, lenders shall:

1. Provide applicants with the same information required in subsection A of this section;

2. Inform applicants that reverse mortgage counseling is required before the loan can be closed; and



3. Provide the names and addresses of counselors listed with the Commissioner's office.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 440 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. At the closing of the reverse mortgage loan, the lender shall provide to the borrower the name of the lender's employee or agent who has been designated specifically to respond to inquiries concerning reverse mortgage loans. This information shall be provided by the lender to the borrower at least annually, and whenever the information concerning the designated employee or agent changes.

B. On an annual basis and when the loan becomes due, the lender shall issue to the borrower, without charge, a statement of account regarding the activity of the mortgage for the preceding calendar year, or for the period since the last statement of account was provided. The statement shall include all of the following information for the preceding year:

1. The outstanding balance of the loan at the beginning of the statement period;

2. Disbursements to the borrower;

3. The total amount of interest added to the outstanding balance of the loan;

4. Any property taxes, insurance premiums or assessments paid by the lender;

5. Payments made to the lender;

6. The total mortgage balance owed to date; and

7. The remaining amount available to the borrower in reverse mortgage loans wherein proceeds have been reserved to be disbursed in one or more lump sum amounts.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 441 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A lender's failure to make loan advances to the borrower under the reverse mortgage loan contract shall be deemed the lender's default of the contract. Upon the lender's default, the lender shall forfeit any right to collect interest or service charges under the contract. The lender's right to recovery at loan maturity shall be limited to the outstanding balance as of the date of default, minus all interest. Lenders may also be subject to other default penalties established by the State Bank Commissioner.

B. Subsection A of this section shall not apply if the lender has previously declared the borrower in default pursuant to the provisions of Section 12 of this act, or if the lender makes the required loan advance within the time stated in the mortgage contract or within thirty (30) days of receipt of notice from the borrower that the loan advance was not received.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 442 of Title 6, unless there is created a duplication in numbering, reads as follows:

A reverse mortgage loan contract may provide for a borrower's default, thereby triggering early repayment of the loan, based only upon one or more of the following terms and conditions:

1. The borrower fails to maintain the residence as required by the contract;

2. The borrower sells or otherwise conveys title to the home to a third party;

3. The borrower dies and the home is not the principal residence of the surviving borrower;

4. The home is not the principal residence of at least one of the borrowers for a period of twelve (12) consecutive months for reasons of physical or mental illness;

5. For reasons other than physical or mental illness, the home ceases to be the principal residence of the borrower for a period of one hundred eighty (180) consecutive days and is not the principal residence of another borrower under the loan, without prior written permission from the lender; or

6. The borrower fails to pay property taxes, insurance premiums and assessments pursuant to an agreement entered into by the borrower and lender under paragraph 1 of Section 6 of this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 443 of Title 6, unless there is created a duplication in numbering, reads as follows:

When a borrower's obligation to repay the reverse mortgage loan is triggered under Section 12 of this act, in addition to all rights otherwise conferred upon owners and borrowers under the laws of this state, the lender must give the borrower not less than ninety (90) days' notice of its intent to initiate foreclosure proceedings. If the contract so provides, interest will continue to accrue during the ninety-day period.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 444 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. The State Bank Commissioner shall adopt rules governing the training of counselors and necessary standards for counselor training and shall establish reasonable fees for training.

B. The Commissioner shall maintain a list of counselors who have satisfied training requirements and shall periodically provide an up-to-date copy of the list to all authorized lenders.

C. The Commissioner shall provide to all counselors who have satisfied training requirements information provided to the Commissioner by authorized lenders pursuant to the provisions of Section 9 of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 445 of Title 6, unless there is created a duplication in numbering, reads as follows:

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing or collecting of a reverse mortgage loan:

1. Misrepresenting material facts, making false promises or engaging in a course of misrepresentation through agents or otherwise;

2. Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment;

3. Improperly refusing to issue a satisfaction of a mortgage;

4. Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person;

5. Contracting for or receiving shared appreciation;

6. Closing a reverse mortgage loan without receiving certification from a counselor that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower; or

7. Failing to comply with the provisions of this act or of any rule promulgated pursuant thereto.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 446 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. The State Bank Commissioner shall adopt rules necessary to implement and enforce the provisions of this act. Upon finding probable cause to believe that an authorized lender is in violation of this act or its rules, or of any law or any rule or regulation of this state, the United States, or an agency of the state or the United States, the Commissioner shall, after affording reasonable notice and opportunity to be heard to the lender, order the lender to cease and desist from the violation.

B. If a lender fails to comply with or to appeal the Commissioner's cease and desist order, the lender shall be subject to an administrative fine of One Thousand Dollars (\$1,000.00) for each violation that is the subject of the cease and desist order. The penalty imposed under this section shall be in addition to and not in lieu of penalties available under any other provision of law applicable to a reverse mortgage lender.

C. Upon a finding that a reverse mortgage lender has violated this act or its rules, the Commissioner may revoke, temporarily or permanently, the authority of the lender to make reverse mortgage loans.

D. A person damaged by a lender's actions may file an action in civil court to recover actual and punitive damages. Attorneys' fees shall be awarded to a prevailing borrower. Nothing in this act shall be construed as limiting any statutory or common law right of a person to bring an action in court for any act or limiting the right of this state to punish a person for the violation of any law.

SECTION 17. This act shall become effective September 1, 1992.

43-2-1610

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