

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2506

Introduced by
Representatives Konopnicki, Brown, Chabin: Anderson, Burns J, Crandall,
DeSimone, Driggs, Stump, Thrasher

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 CHAPTER 16

5 REVERSE MORTGAGES

6 ARTICLE 1. GENERAL PROVISIONS

7 6-1601. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "CREDITOR" MEANS A PERSON WHO REGULARLY MAKES OR BROKERS REVERSE
10 MORTGAGES.

11 2. "REVERSE MORTGAGE" MEANS A NONRECOURSE LOAN THAT IS SECURED BY REAL
12 PROPERTY AND THAT MEETS ALL OF THE FOLLOWING CRITERIA:

13 (a) PROVIDES CASH ADVANCES TO A BORROWER BASED ON THE EQUITY OR THE
14 VALUE IN A BORROWER'S OWNER OCCUPIED PRINCIPAL RESIDENCE.

15 (b) REQUIRES NO PAYMENT OF PRINCIPAL OR INTEREST UNTIL THE ENTIRE LOAN
16 BECOMES DUE AND PAYABLE.

17 (c) IS MADE BY A LENDER LICENSED OR CHARTERED PURSUANT TO THE LAWS OF
18 THIS STATE OR THE UNITED STATES.

19 6-1602. Prepayment; repayment conditions; non-English documents

20 A. PREPAYMENT, IN WHOLE OR IN PART, SHALL BE PERMITTED WITHOUT PENALTY
21 AT ANY TIME DURING THE TERM OF A REVERSE MORTGAGE. FOR THE PURPOSES OF THIS
22 SUBSECTION, PENALTY DOES NOT INCLUDE ANY FEES, PAYMENTS OR OTHER CHARGES THAT
23 WOULD HAVE OTHERWISE BEEN DUE WHEN THE REVERSE MORTGAGE BECOMES DUE AND
24 PAYABLE.

25 B. REPAYMENT OF A REVERSE MORTGAGE IS SUBJECT TO THE FOLLOWING
26 CONDITIONS:

27 1. TEMPORARY ABSENCES FROM THE HOME NOT EXCEEDING SIXTY CONSECUTIVE
28 DAYS SHALL NOT CAUSE THE REVERSE MORTGAGE TO BECOME DUE AND PAYABLE.

29 2. EXTENDED ABSENCES FROM THE HOME EXCEEDING SIXTY CONSECUTIVE DAYS,
30 BUT LESS THAN ONE YEAR, SHALL NOT CAUSE THE REVERSE MORTGAGE TO BECOME DUE
31 AND PAYABLE IF THE BORROWER HAS TAKEN PRIOR ACTION THAT SECURES AND PROTECTS
32 THE HOME IN A MANNER SATISFACTORY TO THE CREDITOR, AS SPECIFIED IN THE
33 REVERSE MORTGAGE AGREEMENT.

34 3. THE CREDITOR'S RIGHT TO COLLECT REVERSE MORTGAGE PROCEEDS SHALL BE
35 SUBJECT TO THE APPLICABLE STATUTE OF LIMITATIONS FOR WRITTEN LOAN CONTRACTS.
36 NOTWITHSTANDING ANY OTHER LAW, THE STATUTE OF LIMITATIONS BEGINS ON THE DATE
37 THAT THE REVERSE MORTGAGE BECOMES DUE AND PAYABLE AS SPECIFIED IN THE REVERSE
38 MORTGAGE AGREEMENT.

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

43 C. A CREDITOR THAT PRIMARILY USES A LANGUAGE OTHER THAN ENGLISH TO
44 COMMUNICATE WITH THE BORROWER ABOUT THE TERMS OF A REVERSE MORTGAGE THAT THE
45 CREDITOR IS MAKING OR ARRANGING FOR THE BORROWER SHALL DELIVER TO THE

1 BORROWER AN UNEXECUTED TRANSLATION OF THE REVERSE MORTGAGE DOCUMENTS IN THE
2 LANGUAGE THE CREDITOR PRIMARILY USED IN COMMUNICATIONS WITH THE BORROWER.
3 DELIVERY OF EACH NON-ENGLISH DOCUMENT SHALL BE MADE TO THE BORROWER BEFORE OR
4 AT THE SAME TIME THAT THE REVERSE MORTGAGE DOCUMENTS ARE PROVIDED TO THE
5 BORROWER IN ENGLISH. THE BORROWER SHALL EXECUTE THE ENGLISH LANGUAGE REVERSE
6 MORTGAGE AGREEMENT.

7 6-1603. Interest rates; costs and fees; mortgage due and
8 payable

9 A. A REVERSE MORTGAGE MAY PROVIDE FOR A FIXED OR ADJUSTABLE INTEREST
10 RATE OR A COMBINATION OF A FIXED AND ADJUSTABLE INTEREST RATE, INCLUDING
11 COMPOUND INTEREST, AND MAY ALSO PROVIDE FOR INTEREST THAT IS CONTINGENT ON
12 THE VALUE OF THE PROPERTY ON EXECUTION OF THE REVERSE MORTGAGE OR AT MATURITY
13 OR ON CHANGES IN VALUE BETWEEN CLOSING AND MATURITY.

14 B. A REVERSE MORTGAGE MAY INCLUDE COSTS AND FEES THAT ARE CHARGED BY
15 THE CREDITOR, OR THE CREDITOR'S DESIGNEE, ORIGINATOR OR SERVICER, INCLUDING
16 COSTS AND FEES CHARGED ON EXECUTION OF THE REVERSE MORTGAGE AGREEMENT, ON A
17 PERIODIC BASIS OR ON MATURITY.

18 C. A REVERSE MORTGAGE MAY BECOME DUE AND PAYABLE ON THE OCCURRENCE OF
19 ANY ONE OF THE FOLLOWING:

20 1. THE HOME SECURING THE REVERSE MORTGAGE IS SOLD OR TITLE TO THE HOME
21 IS OTHERWISE TRANSFERRED.

22 2. ALL BORROWERS CEASE OCCUPYING THE HOME AS A PRINCIPAL RESIDENCE
23 EXCEPT AS PROVIDED IN SECTION 6-1602.

24 3. ANY FIXED MATURITY DATE AGREED TO BY THE CREDITOR AND THE BORROWER
25 OCCURS.

26 4. AN EVENT OCCURS THAT IS SPECIFIED IN THE REVERSE MORTGAGE AGREEMENT
27 THAT JEOPARDIZES THE CREDITOR'S SECURITY.

28 6-1604. Prohibited practices

29 A. IF A REVERSE MORTGAGE PROVIDES FOR PERIODIC ADVANCES TO A BORROWER,
30 THESE ADVANCES SHALL NOT BE REDUCED IN AMOUNT OR NUMBER BASED ON ANY
31 ADJUSTMENT IN THE INTEREST RATE.

32 B. A CREDITOR SHALL NOT REQUIRE AN APPLICANT FOR A REVERSE MORTGAGE TO
33 PURCHASE AN ANNUITY AS A CONDITION OF OBTAINING A REVERSE MORTGAGE.

34 C. A CREDITOR OR A BROKER ARRANGING A REVERSE MORTGAGE SHALL NOT DO
35 EITHER OF THE FOLLOWING:

36 1. OFFER AN ANNUITY TO THE BORROWER BEFORE THE CLOSING OF THE REVERSE
37 MORTGAGE OR BEFORE THE EXPIRATION OF THE RIGHT OF THE BORROWER TO RESCIND THE
38 REVERSE MORTGAGE AGREEMENT.

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

42 6-1605. Deed of trust; statement

43 THE FIRST PAGE OF ANY DEED OF TRUST SECURING A REVERSE MORTGAGE SHALL
44 CONTAIN THE FOLLOWING STATEMENT IN SIXTEEN-POINT BOLDFACE TYPE OR LARGER:

45 THIS DEED OF TRUST SECURES A REVERSE MORTGAGE LOAN.

1 6-1606. Financial counseling; notice

2 BEFORE ACCEPTING A FINAL AND COMPLETE APPLICATION FOR A REVERSE
3 MORTGAGE OR ASSESSING ANY FEES, THE CREDITOR SHALL:

4 1. PROVIDE THE BORROWER WITH THE FOLLOWING PLAIN LANGUAGE STATEMENT,
5 IN CONSPICUOUS SIXTEEN-POINT BOLDFACE TYPE OR LARGER, ADVISING THE BORROWER
6 ABOUT FINANCIAL COUNSELING BEFORE OBTAINING THE REVERSE MORTGAGE:

7 IMPORTANT NOTICE TO REVERSE MORTGAGE LOAN APPLICANT

8 IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE LOAN, YOU WILL
9 SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL AND
10 FINANCIAL CONSEQUENCES. IT IS THEREFORE IMPORTANT TO UNDERSTAND
11 THE TERMS OF THE REVERSE MORTGAGE LOAN AND ITS EFFECT. BEFORE
12 ENTERING INTO A REVERSE MORTGAGE LOAN, THE CREDITOR WILL PROVIDE
13 YOU WITH A LIST OF AT LEAST FIVE HOUSING COUNSELING AGENCIES.
14 YOU ARE REQUIRED TO CONSULT WITH AN INDEPENDENT COUNSELOR THAT
15 IS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
16 DEVELOPMENT. YOU MAY ALSO WANT TO DISCUSS YOUR DECISION WITH
17 FAMILY MEMBERS OR OTHERS ON WHOM YOU RELY FOR FINANCIAL ADVICE.

18 2. PROVIDE THE BORROWER WITH A LIST OF AT LEAST FIVE HOUSING
19 COUNSELING AGENCIES, INCLUDING AT LEAST TWO AGENCIES THAT CAN PROVIDE
20 COUNSELING BY TELEPHONE. THE LIST SHALL INCLUDE ONLY AGENCIES THAT ARE
21 APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO
22 PROVIDE REVERSE MORTGAGE COUNSELING.

23 3. RECEIVE A CERTIFICATION FROM THE BORROWER OR THE BORROWER'S
24 AUTHORIZED REPRESENTATIVE THAT THE BORROWER HAS RECEIVED COUNSELING FROM AN
25 AGENCY AS DESCRIBED IN PARAGRAPH 2. THE CERTIFICATION SHALL BE SIGNED BY THE
26 BORROWER AND THE AGENCY COUNSELOR, AND SHALL INCLUDE THE DATE OF THE
27 COUNSELING AND THE NAME, ADDRESS AND TELEPHONE NUMBER OF BOTH THE COUNSELOR
28 AND THE BORROWER. AN ELECTRONIC FACSIMILE COPY OF THE HOUSING COUNSELING
29 CERTIFICATION SATISFIES THE REQUIREMENTS OF THIS PARAGRAPH. THE CREDITOR
30 SHALL MAINTAIN THE CERTIFICATION IN AN ACCURATE, REPRODUCIBLE AND ACCESSIBLE
31 FORMAT FOR THE TERM OF THE REVERSE MORTGAGE.

32 6-1607. Failure to make reverse mortgage advances or cure
33 default; forfeiture to borrower

34 A CREDITOR WHO FAILS TO MAKE REVERSE MORTGAGE ADVANCES AS REQUIRED IN
35 THE REVERSE MORTGAGE AGREEMENT AND WHO FAILS TO CURE AN ACTUAL DEFAULT AFTER
36 NOTICE AS SPECIFIED IN THE REVERSE MORTGAGE AGREEMENT SHALL FORFEIT TO THE
37 BORROWER TREBLE THE AMOUNT WRONGFULLY WITHHELD PLUS LEGAL INTEREST.

38 6-1608. Applicability

39 ANY REVERSE MORTGAGE ISSUED ON PROPERTY WITHIN THIS STATE SHALL COMPLY
40 WITH THIS CHAPTER.

41 6-1609. Enforcement

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

- 1 B. ANY PROVISION OF A REVERSE MORTGAGE AGREEMENT THAT VIOLATES THIS
- 2 CHAPTER IS UNENFORCEABLE AGAINST THE BORROWER.
- 3 C. A PRIVATE ACTION AGAINST A CREDITOR SHALL BE COMMENCED WITHIN SIX
- 4 YEARS AFTER THE CLOSING OF THE REVERSE MORTGAGE.
- 5 D. THE REMEDIES PROVIDED IN THIS CHAPTER ARE NOT INTENDED TO BE THE
- 6 EXCLUSIVE REMEDIES AVAILABLE TO A BORROWER.
- 7 6-1610. Waiver prohibited
- 8 A PERSON SHALL NOT WAIVE ANY PROVISION OF THIS CHAPTER.