HOUSE . . . . . No. 3461

By Ms. Gibson of Belmont, petition of Mary Jane Gibson, Michael J. Barrett and Kevin G. Honan for legislation to ensure that elderly persons contemplating home equity conversion and who meet certain economic guidelines receive third party counseling prior to such a transaction. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT TO ENSURE THAT ELDERS CONTEMPLATING HOME EQUITY CONVERSION AND WHO MEET CERTAIN ECONOMIC GUIDELINES RECEIVE THIRD PARTY COUNSELING PRIOR TO SUCH A TRANSACTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Equity Conversion Definitions.

The following words as used in this chapter unless the context otherwise requires, shall have the following meanings: "Reverse mortgage loan", a loan (a.) made to a borrower in which the principal amount is paid to the borrower in equal or unequal installments over a period of months or years, and interest is assessed and authorized closing costs incurred as specified in the loan agreement; and (b.) which is secured by a mortgage on residential property owned and occupied by the borrower; and (c.) Which is due when the principal has been fully paid to the borrower, or upon sale of the property, or upon the death of the last surviving borrower, or upon the termination of the use of the property by the borrower as the borrower's principal residence.

"Borrower", any natural person, 60 years of age or older who owns or holds an interest as joint tenant-in-common in the property, securing a reverse mortgage loan.

"Lender", any bank, mortgage company, credit union, insurance company, financial institution, financial holding company, or their subsidiaries doing business in the Commonwealth of Massachusetts.

"Sale and leaseback transaction," a transaction in which a seller sells or offers to sell residential real property and in which the buyer agrees to grant the seller a remainder of interest in the property for the seller's lifetime or for a term, including a renewal option, which is not expected to end prior to the seller's death. A sale-leaseback transaction shall refer to one transaction which may be composed of one or more documents, including but not limited to, a sale-leaseback agreement, note or other evidence of promise to pay the purchase price, mortgage, land installment contract, and lease.

"Commitment", that time at which the buyer and seller are legally bound to enter into a sale and leaseback transaction.

"Buyer, a person, corporation, partnership or other legal entity and, depending on the context, refers to the mortgage, purchaser, and lessor.

"Seller", an individual, and if a joint tenant or tenant in common, at least one of whom is 60 years of age or older, and depending on the context, refers to the mortgagor, vendor or lessee.

"Residential real property", improved real property located in Massachusetts and occupied as the principal residence by the seller at the time of the sale-leaseback transaction.

"Low income elder", any individual 60 years of age or older who is or may in the future become eligible for any income maintenance or benefits programs administered by the State of Massachusetts.

"Third party counseling agency", any nonprofit agency which meets the approved standards for elder equity conversion counseling as set by the Massachusetts Executive Office of Elder Affairs.

SECTION 2. Counseling

A lender may not make a reverse mortgage loan subject to this Act unless the borrower has completed a home equity conversion counseling program approved by the Executive Office of Elder Affairs, or has declined in writing, in a form specified by the Executive Office of Consumer Affairs, the opportunity to participate in a counseling program.

8 A sale-leaseback transaction may not be brought to
9 commitment prior to receipt, by the buyer, of written evidence
10 in the form specified by the Executive Office of Consumer Affairs,
11 that the seller has been offered and declined the opportunity to
12 complete a home equity conversion counseling program approved
13 by the Executive Office of Elder Affairs.
14 An "approved home equity conversion counseling program"
15 shall mean a counseling program conducted or supervised by a
16 nonprofit organization with the necessary experience and
17 resources to advise the elderly in the estate, tax, and financial
18 implications of various home equity conversion options. Nothing
19 in this act shall be interpreted to regulate or substitute for legal
20 tax or financial counseling provided to the seller in sale-leaseback
21 transactions, and the borrower in reverse mortgage loans, by
22 professionals licensed or registered to do business in Massachu-
23 setts, including but not limited to attorneys, accountants and deals
24 in securities or their agents.

1 SECTION 3. For the purposes of providing counseling
2 pursuant to this Act, the Executive Office of Elder Affairs shall
3 create and maintain a listing of all approved counseling
4 organizations and shall make this list available to the public,
5 financial institutions and government agencies.

1 SECTION 4. This Act shall not be applicable until the effective
2 date of a process to approve home equity conversion programs
3 by the Executive Office of Elder Affairs is established.

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