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The reverse mortgage - an opportunity to supplement pension benefits in Poland?

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Abstract: The article presents an outline of the principles for granting reverse mortgage loans by banks and other credit institutions, as well as mechanisms intended to protect consumers who may potentially take advantage of this service. Its objective is not to offer a detailed analysis and assessment of the solutions adopted in the new Reverse Mortgage Act, but rather to present this new financial service as an opportunity for seniors who have amassed a sufficient asset base during their working life to improve their financial situation and complement their pension income. The article signals some potential dangers which can accompany this instrument, as well as other similar products offered by some financial institutions, such as lifetime annuities, which can in practice distort and subvert the purposes for which the Reverse Mortgage Act was adopted

Key words: reverse mortgage, retirement pension, consumer, financial services, lifetime annuity

JEL codes: H55, J14.

1. Introduction

As a result of the Reverse Mortgage Act, which was passed by the Sejm on 23 October 2014, signed by the President on 10 November 2014 and which entered into force on 15 December 2014 (OJ L 2014, item 1585), the institution of the reverse mortgage has come to the forefront of legal issues.

The worsening economic situation of the elderly has led to many seniors, whose pension benefits are significantly smaller than the income they had earned during their working lives, to seek additional financing for their day-to-day expenses. Because of their financial situation, these people are often deprived of creditworthiness and frequently become "victims" of non-banking credit institutions which provide what are readily available but extremely costly loans, frequently

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in violation of the law. One instrument which may help provide additional liquidity is a financial service available for decades in other countries (including the USA, United Kingdom, Spain, Sweden, Germany, Finland, the Netherlands, Hungary and France): the reverse mortgage, which facilitates the extraction of cash from previously-acquired financial assets. It essentially boils down to “unfreezing” the equity of capital accumulated in a real property, converting it into a liquid financial asset.

As a result of growing demographic problems and difficulties in ensuring adequate pension benefits for an expanding number of senior citizens, more and more countries in recent times have begun to lend support to reverse mortgages, including Poland, which has just passed its own Reverse Mortgage Act.

This article presents an outline of the principles for granting reverse mortgage loans to natural persons (consumers) by banks and other credit institutions, as well as mechanisms intended to protect consumers who may potentially take advantage of this service. Its objective is not to offer a detailed analysis and assessment of the solutions adopted in the new Reverse Mortgage Act, but rather to highlight this new financial service as an opportunity for seniors who have amassed a sufficient asset base during their working life to improve their financial situation and compliment their pension income. My intention is also to signal some potential dangers which can accompany this instrument, as well as other similar products offered by some financial institutions which can in practice distort the foundation and the purposes for which the reverse mortgage has been established.

2. The concept and the essence of the reverse mortgage (reverse mortgage loan)

The growing problems faced by contemporary pension schemes operating in industrialized countries are associated primarily with the ageing of societies, increasing average life expectancy and declining birth rate (Ghilarducci 2010:327; EC 2012:3); these lead to more and more countries being forced to reform their retirement insurance schemes by reducing benefit payments (Barr, Diamond 2008; Czajka 2004; Żukowski 2006; Sieczkowski 2014), extending the retirement age and transitioning to a liberal model of social policy (Cambridge 1990). This is also associated with the phenomenon of the flattening of retirement insurance systems, which is also visible in Poland and which consists in encouraging ensured individuals to assume greater responsibility for financing their own pension benefits, because the state is shifting its model to providing only enough benefits to achieve a particular standard of living. This results in people consuming during the last phase of their lives the assets which they had acquired during previous phases. In European states undertaking reform of their retirement systems, these phenomena have led in many countries to (Reifner et al., 2009:31) the institutionalization of the reverse mortgage, while others, such as Poland, are in the first stages of its introduction.

This institution was first established in the United States in 1961(Wicke 2008:4) as an alternative source of financing for people in their old age, becoming an important element of the retirement system (Armada-Rudnik 2011:34), although the first legal regulations did not come about until 1987 (Pawlęga 2010:61). The reverse mortgage is classified as one of the so-called equity release (ERS) services, meaning it facilitates the transformation of illiquid capital accumulated in real property into liquid funds (Reifner et al., 2009:31; Pawlęga 2010:59; Armada-Rudnik 2011:34). It is a new service on the financial market, also referred to as “a seniorage, enabling the generation” (Pawlęga 2010:59) of additional financial resources by bring a special type of loan agreement secured by a mortgage on real property (reverse mortgage). It boils down to the release of capital accumulated in the real property and conversion into liquid financial assets.

The reverse mortgage is a product primarily targeting older people, although this is not directly stated in the definition of a reverse mortgage contract as set forth in the Reverse Mortgage Act (Art. 4(1)RMA). It is worth noting that an age-based restriction was present in several draft versions of the legislation, but this was ultimately abandoned by the legislature. However, across the European Union the age at which this product may be acquired is different depending on the country, generally falling between 55 and 65 years old (Reifner et al., 2009:31) while in the United States it is 62 (Armada-Rudnik 2011:34).

It would seem that the likely borrowers in this case are people in a specific financial situation, and often a particular family situation as well. “The potential target group for the reverse mortgage can be divided based on their motivation into wealthy elderly individuals who have no heirs, individuals whose pension income is insufficient for their day-to-day needs, and those who are alone” (Maćkowska 2009:327).

Broadly speaking, the service consists in a bank or other credit institution authorized to provide a reverse mortgage loan pays the borrower a defined sum of money which is secured by means of a mortgage on a real property. The borrower remains the owner of the property until death, and after the borrower dies, ownership of the property passes to the bank, which in turn either accepts repayment of the loan by the descendants or sells the property. In the latter case, the descendants receive the difference between the value of the loan and the value of the proceeds of the sale. The essence of the reverse mortgage is the absence of a repayment obligation until the death of the borrower or, depending on the legal solutions adopted, until a specified moment following the death of the borrower. The claim of the lending institution is generally satisfied from the proceeds generated by the sale of the property.

The absence of the obligation to repay the loan until the death of the borrower or at a specified moment following the death of the borrower facilitates individuals enjoying ownership or another right in a real property to acquire additional financial means through "unlocking" the capital accumulated in the possessed properties using services provided by entities specializing in them.

At its initial phase, the instrument of the reverse mortgage is applied at a moment when a natural person is the owner the property, and following the expiration of the contract the object constituting security – the real property – is transferred to the creditor if the descendants choose not to repay the loan amount. In exchange, for the duration of the contract the borrower receives regular cash payments (lump sum, regular payments, revolving credit with a fixed limit). One characteristic aspect is that the value of the loan is essentially unknown, as is the amount to be repaid, which is not determined in advance (Maćkowska 2009:328) owing to the fact that during the conclusion of the contract it is not knowable how long the benefit will be paid.

This instrument is not monolithic, as two versions of it can be distinguished: the loan model, which is the one adopted in the Polish Reverse Mortgage Act, and the sale model (Pawlęga 2010:60). The basis of this classification is the moment at which the real property is sold, id est the transfer of the ownership right. Under the loan model, the moment of sale is the termination of the contract, id est the death of the owner. The alternative sale model assumes that the right of ownership in the real property is conveyed at the same time as the contract is concluded. This is a fundamental distinction. Following the conclusion of a contract under the sale model the financial institution becomes the owner, in contrast to the loan model under which the consumer remains the owner until death. What follows is that the legal effects of the two types of contracts are quite different, which is why consumers should be particularly aware of the distinction; this is made all the more difficult considering how a range of different names are employed in labelling these mutations.

The primary benefit of the service is the potential to acquire additional cash funds serving to compliment the benefits received from the pension system. This is of particular significance considering the scope of personal needs which grow with age, such as medical care. These funds can serve as the foundation for satisfying broader consumer needs, and can be freely disposed of by the borrower. In addition, this income is not subject to personal income tax (Maćkowska 2009:331). The activation of these funds from real property constitutes a sort of partial refund of the expenses incurred in acquiring real property, which is generally undertaken by way of a mortgage loan, which is the foundation of the reverse mortgage. A necessary condition for taking advantage of this service is the possession of ownership rights in the real property. However, the borrower need not have creditworthiness, and the absence of it does not constitute a barrier to concluding the contract. An additional benefit of this instrument is the right to reside permanently in the property constituting the object of the agreement, while the loan model also leaves the right in rem with the borrower until death. Descendants also have certain rights upon the death of the borrower, as a reverse mortgage does not negate the right to inheritance. Descendants are afforded the possibility of repaying the debt to the lending institution following the death of the debtor.

3. Legal regulation governing the reverse mortgage in Poland – subjective and objective scope of the Reverse Mortgage Act

The Reverse Mortgage Act of 23 October 2014 (OJ L 2014, item 1585 – hereinafter RMA.), defines the rules for and mode of concluding a contract to enter into a reverse mortgage, the rights and duties of the parties, and the rules for the settlement of obligations arising out of it (Art. 1).

To a large degree it is based on the solutions already adopted for regulation of consumer loans contained in the Consumer Credit Act 2011, and provides protection for the interests of clients/consumers taking advantage of that service, setting forth inter alia the rules governing withdrawal from such a contract, the obligation to provide information concerning all of the most important matters associated with it, guarantee of the right to early repayment of the loan, and restrictions on the capacity of the crediting institution to withdraw from the agreement to circumstances specified in the Act. It is not, however, the sole piece of legislation that will regulate the issue of reverse mortgages, as the Act itself refers in several places to other legal acts, such as the Banking Act 1997 (including in order to define the concept of a bank, a branch of a foreign bank, a branch of a credit institution and a credit institution conducting cross-border operations – and therefore entities authorized to issue reverse mortgage loans), the Real Property Management Act 1997 (in respect of determining the market value of a real property or dwelling in order to establish the basis for determining the value of a reverse mortgage loan.

Regulating the rules for providing this new service, as well as the rights and duties of parties, is all the more important as senior citizens, who constitute the target group for entities offering this type of service, are people often of a quite low level of economic and legal awareness, and are frequently subjected to aggressive marketing campaigns. Sanctioning the rules for issuing reverse mortgage loans may also help build confidence in the financial market in respect of financing real property. It is intended to ensure that beneficiaries of this particular financial service are given the choice between a true reverse mortgage and the life annuity contract already available in practice.

The Act regulates many issues important for the functioning of this institution, such as by providing a definition of a reverse mortgage contract, the parties to a reverse mortgage contract, the types of rights in real property that can serve as grounds for concluding a reverse mortgage contract; security for the repayment of a reverse mortgage loan; the basis for determining the value of a reverse mortgage loan; the rules and mode of concluding the contract, the rights and duties of the parties, and also the obligations resting on the borrower in respect of the real property and consequences for failure to perform them; withdrawal from the contract by the borrower and by the lending institution; the right to rescind the contract by the borrower; the right to early repayment of the loan; the right of descendants to repay the loan following the death of the borrower and the rules for settlement between the lending institution and the descendants; informational obligations incumbent on lending institutions towards clients in respect of reverse mortgages and the effects of failure to observe them, as well as settlement of a reverse mortgage.

Pursuant to Art. 4(1) RMA, which contains a definition of a reverse mortgage contract, such a “contract is an agreement pursuant to which a bank (or another lending institution) undertakes to make available to a borrower (exclusively natural persons) a defined sum of money for an indefinite period of time, which is to be repaid following the death of the borrower, and the borrower undertakes to establish security for the repayment of that sum as well as interest and other associated costs”. It therefore results from this definition that it is a particular type of the credit agreement defined in Art. 69 of the Banking Act, secured by a mortgage on a real property or a specified right in a real property, such as the right of ownership or of partial ownership, the right of perpetual usufruct, or cooperative ownership right in a residential dwelling.

A reverse mortgage contract means that the rights to the real property are conveyed to the lending institution only upon the death of the borrower. The lending institution must provide the descendants and heirs of the borrower with the opportunity to repay the value of the reverse mortgage loan with interest and associated costs within 12 months of the day on which the opening of the estate occurs (the day of the borrower’s death).

The security for such a transaction is a mortgage set up on a real property or a specified right in a real property. After the death of the beneficiary, his descendants may decide to repay the loan and retain the rights to the real property, or to allow it to pass to the lending institution. At the same time, even if the rights to the property are transferred to the lending institution, the descendants receive a sum equivalent to the difference between the value of the lending institution’s claim and the value of the real property, assuming the balance is positive.

The Act does not contain a minimum age requirement for the borrower, which is attributed to the fact that instituting one would significantly limit the range of potential beneficiaries of the solution. However, when considering the construction of the contract, the primary group of beneficiaries are older individuals. “Having regard to their usually weaker negotiating position and low levels of legal awareness, there is a significant risk of disinformation, including the risk of failure to distinguish the sales model from the loan model, with different legal effects” (Macierzyńska- Franaszczyk 2011:36-37).

Owing to the desire to ensure the security of beneficiaries, as well as certainty and continuity of the provision of the reverse mortgage service, the legislator restricts the pool of entities entitled to engage in it. Pursuant to Art. 4(1)in conjunction with Art. 2(2)RMA, reverse mortgage loans may be offered by lending institutions, id est entities which are banks, branches of foreign banks, branches of lending institutions and lending institutions conducting cross-border operations. These entities are defined in the Banking Act, and they are institutions subject to the oversight of the public authority responsible for financial markets in Poland - the Polish

Financial Supervision Authority– and its counterparts in other EU Member States (authorities in the home Member States of the European Union). In addition, oversight is not the only restriction, as these entities are under legal restrictions resulting from other legislation, and must fulfil a range of other requirements concerning the conducting of their business (regulated activity).

The construction of a closed catalogue of entities authorized to issue reverse mortgage loans, composed of those enjoying the highest level of trust from the general public as measured in dedicated studies, coupled with restrictions in the scope of the Act's application, was supposed to constitute the basis for the proper functioning of this financial instrument and to limit abuses by institutions taking advantage of poor awareness of the law and of the significance of the contracts – it may not necessarily achieve these aims. It may serve to reduce the readiness of lending institutions to issue reverse mortgage loans considering the large number of restrictions associated with them, in turn growing the ranks of potential clients for entities which are not subject to the obligation to observe the Reverse Mortgage Act, which provide a similar service (lifetime annuity) and which are not subject to oversight.

Another important issue regulated by the Act is the basis for determining the value of a reverse mortgage loan. The legislator has chosen to use the market value of the real property as defined under the Real Property Management Act, which is established by a licensed appraiser. This condition concerning the entity authorized to make such an estimate is intended to ensure that a lending institution receives professional and accurate information provided by independent entities licensed to determine the value of real properties. This is also protection for the client against being given a dishonest appraisal artificially lowering the value of the real property, which could be done by the lending institution in order to reduce the value of the benefit paid to beneficiaries. However, the Act does not regulate the issue of who is responsible for bearing the costs of making such determinations.

Improper understanding of the instrument and the previous absence of specific protection of the consumer's/borrower's legal interests generate significant risks of abuse by financial institutions. In order to ameliorate these risks, informational obligations are introduced. Similarly to EU consumer directives, the Reverse Mortgage Act also evidences an effort to provide comprehensive protection of consumers through robust informational obligations in the pre-contract phase, consisting in the necessity to provide an informational brochure (Art. 8 RMA) whose template is set out in a Regulation of the Minister of Finance, as well as contractual elements which should be present in a reverse mortgage loan agreement (Art. 10 RMA).

In addition, the Act establishes sanctions in the form of free credit, similarly to the Consumer Credit Act, as punishment for failure to observe informational duties (Art. 15 RMA), and its statutory regulation also provides the possibility to apply other sanctions contained in separate legislation- in particular the Competition and Consumer Protection Act 2007 and the Act on countering dishonest market practices (Rutkowska – Tomaszewska 2013:389-394 & 661-669.)

One aspect of a reverse mortgage contract is the duties of the borrower (inter alia the borrower is obliged to maintain in good condition the real property which serves to secure the claim of the lending institution, to maintain its proper technical condition so as to prevent excessive depreciation, to make timely payment of all obligations under public law associated with maintenance of real property such as taxes and other fees, and to hold a policy against acts of God), set forth in Art. 11 and 16 RMA. While informational observations have minimized the risk borne by the beneficiary, the obligations of the borrower are intended to minimize the risk of loss by the lending institution. Non-performance of these obligations results in a summons to complete them within an appropriate time frame, and in the event of failure to do so the lending institution can request power of attorney. Continual failure to perform these obligations and refusal to grant power of attorney constitutes grounds for the lending institution to terminate the contract. This construction is designed to protect not only the institution, as it also takes into account the particular situation of borrowers, who, with the passage of time, may experience increasing difficulties with fulfilment of all the duties imposed on them.

The legislator also details certain situations and periods of time associated with them after which repayment of a reverse mortgage loan is due, including interest and other costs foreseen in the contract, as well as regulating in detail the issue of settlement of a reverse mortgage loan. In the event of the death of the borrower, if the descendants neither repay the debt nor undertake an obligation to do so, the lending institution acquires a claim to its repayment. This regulation is designed so as to make it easier for descendants to repay the loan and to perform all of the formal obligations associated with the estate of the deceased.

The legislator has also included provisions commonly found in regulations concerning consumers, id est special privileges for the borrower/consumer. Apart from the right to withdraw from the contract, the borrower retains the right to rescind the contract within a strictly-defined period following its conclusion. Pursuant to Art. 12 RMA, the borrower is entitled to rescind a reverse mortgage loan contract, without cause, within 30 days of the conclusion of the agreement.

While the reverse mortgage loan is a type of consumer loan, as it is only granted to natural persons, the legislator does recognize its unique character, and in doing so has created specific legal regulation and special protection for the borrower/consumer different from that in the Consumer Credit Act. In doing so the legislator has excluded the reverse mortgage loan from the protection foreseen in the Consumer Credit Act (Art. 37 RMA), which does not mean that the borrower is left without protection, as the relevant instruments are contained in the Reverse Mortgage Act itself as legislation directly addressing that institution. This protection, however, is limited to a smaller group of entities obliged to observing the provisions of the Act in conjunction with to their right to offer the service. The Act does not encompass consumers who take advantage of a similar service, already available from financial institutions and known as the lifetime annuity, regulated in the Civil Code (the Civil Code 1964); this product consists in the transfer of the right of ownership in a real property in exchange for an obligation on the part of a mortgage fund to pay the owner a lifetime annuity and the right to reside in the real property for life. However, there are essentially no regulations or oversight exercised over entities offering such contracts, which leads at times to abuses.

The main problem at present is the fact that mortgage funds offering services based on the lifetime annuity contract are not subject to the oversight of the Financial Supervision Authority. Clients are not afforded proper legal protection, and no regulation has been introduced specifically addressing lifetime annuities in exchange for real property. Entities offering this service are not under any obligation to provide borrowers with sufficient information concerning the nature of the financial product and the consequences it carries. This situation may soon change as a result of legislation presently being drafted to regulate lifetime cash annuities (Draft of the Lifetime Cash Annuity Act along with legislative rationale available at https://legislacja.rcl.gov.pl/projekt/227241, http://konsultacje.gov.pl/node/3514), which will constitute a comprehensive set of separate regulations addressing the sale model reverse mortgage and therefore provide protection to the interests of clients using this financial service.

4. Dangers and problems associated with the reverse mortgage

In spite of the many benefits offered by the reverse mortgage to both borrowers and lenders, this instrument also carries many risks associated primarily with the subject matter of the contract – real property which consumers work for many years to acquire, often spending their entire lives paying back long-term obligations incurred for that purpose, after which the same property forms the basis for the provision of payments to senior citizens intended to improve their financial situation, supplement retirement income and ensure reasonable quality of life after their working lives have come to a close.

The primary danger associated with the reverse mortgage is the risk of misinformation. It is of great importance that the lending institution make all efforts to properly perform the informational duties placed on them by the legislator by presenting full and accurate information in a transparent manner, so that clients, who are in a naturally weaker position and less knowledgeable, can take an informed and considered decision based on comprehensive advisory and informational service. An additional threat is that of a dishonest appraisal of the real property, as there is the potential for its price to be set at a value below that of the market rate, which would then lead to lower benefits paid to the borrower. Another flaw built into the instrument is the impossibility of determining the duration of the contract, which results from the impossibility of determining the moment of the death of the borrower at the time the contract is concluded. “Considering that the life span of a senior citizen following the conclusion of the agreement may not be particularly long, the lending institution may only provide monthly benefits amounting to a small percentage of the real value of the property” (Maćkowska 2009:332). However, the most significant flaw in this solution is the reduced compensation received in exchange for real property, which results from the fact that its value is determined by the bank, which then uses it to calculate the benefits to which the borrower is entitles. This leads to clients receiving a total sum of between 30 and 60% of their home or flat’s value.

In addition, banks themselves are exposed to risk associated with the value of the real property, and the legislator has placed the burden on them to carry insurance against the risk of long life spans. Another problem may be associated with the costs involved in issuing the loan, such as appraising the value of the real property. What is more, this loan influences the manner in which the real property can be used, as the client surrenders control over matters concerning the subject matter of the contract, such as needing the bank's consent to make adjustments in the layout of the dwelling (www.ign.org.pl).

Independently (and rather outside) of the regulation contained in the Reverse Mortgage Act, there are entities on the financial market from outside the financial sector, such as mortgage funds, which take advantage of freedom to engage in commercial activity and the freedom of contract principle to offer services which perform a similar function – offering a lifetime annuity in exchange for a flat or house, id est a reverse mortgage based on the sale model. The essence of this institution consists in a lifetime annuity in exchange for the notarial conveyance of the real property at the moment of conclusion of the contract to the benefit of the institution. The most well-known of these include Fundusz Hipoteczny DOM S.A., Centralny Fundusz Hipoteczny Sp.zo.o. and Fundusz Hipoteczny Familia S.A. Using in their marketing materials the expression "reverse mortgage", these companies actually provide a lifetime annuity rather than a true reverse mortgage loan. The terminological problem results primarily from unclear naming conventions, and the existence of several types of reverse mortgage loans. In addition, these entities often apply forbidden contractual clauses and dishonest market practices consisting in misleading advertising. Advertisements and standard form contracts used by entities offering such agreements have given rise to investigations by the Office of Competition and Consumer Protection (UOKiK), which has conducted proceedings against mortgage funds in order to recognize certain contractual provisions as impermissible clauses (The President of the UOKiK has filed suit at the Court of Competition and Consumer Protection (SOKiK) for entry into the register of forbidden clauses provisions of agreements for a lifetime annuity offered by Fundusz Hipoteczny DOMandPolskiego Funduszu Hipotecznego Gwarancja sp. z o.o. These cases were concluded by a verdict from the Court and entry of the disputed clauses into the register of forbidden contractual clauses – see: Verdict of SOKiK of 16.01.2013 and Verdict of SOKiK of 21. 05.2014) as well as proceedings intended to ascertain the existence of dishonest market practices (practices violating the collective interests of consumers) in marketing materials (In September 2011, the President of the UOKiK initiated proceedings demonstrating that an advertisement for a lifetime annuity was misleading. Its target audience, people over the age of 65, could have believed that the lifetime annuity was a benefit guaranteed by the state, whereas in fact it was an offer to conclude a commercial agreement. The President of the UOKiK felt that the advertisement, which imitated an official government message addressed to older consumers, was deceptive. The company Fundusz Hipoteczny DOM was hit with a fine for engaging in a practice violating the collective interests of consumers (Decision 2012).

What is also important, the scale of these threats may in fact lead to a worsening, rather than improvement, in the financial situation of seniors. It is thus necessary to exercise oversight and enforce compliance with the provisions of the legislation and the rules for issuing reverse mortgage loans, but also to exercise oversight over entities that provide the similar service of lifetime annuities, which presently remain outside the scope of financial market oversight.

5. Conclusion

Introduction of legal regulations concerning the reverse mortgage is intended to ensure that beneficiaries of that financial service the choice between a true reverse mortgage and the established sale model, which performs a similar function yet is based on the lifetime annuity contract regulated by the Civil Code, and which can be offered by entities not under the jurisdiction of the Financial Supervision Authority.

The assumption underlying the adoption of the act is that the sale model based on the lifetime annuity contract as regulated in the Civil Code and the loan model based on the reverse mortgage will function alongside each other in the Polish legal regime, as is the case in other countries, and thus giving potential beneficiaries the freedom to choose the service best suited to their needs (Assumptions to draft Reverse Mortgage Act as of 05.01.2012, p.48).

An attempt at fragmentary regulation of the institution of reverse mortgages will not only lead to Poland’s senior citizens remaining at the mercy of entities offering lifetime annuities, and whose trustworthiness and market practices are frequently brought into question by the Office of Competition and Consumer Protection, by the same token constituting a threat to the interests of the elderly consumers taking advantage of this financial service. It is worth emphasizing that in these cases clients are taking decisions which affect quite valuable assets, often representing wealth accumulated over their entire lives, making it vital to ensure the safety and transparency of such services on the financial market (Macierzyńska- Franaszczyk 2011:36-39; Maćkowska 2009:326-342).

The building of a financial position, particularly one strengthening the position of a senior citizen, whose income naturally declines upon reaching a certain age, indicates that there is a need to implement systemic solutions facilitating the use of real property in their possession in order to boost access to liquidity during old age. For example, by taking out a reverse mortgage loan which does not necessarily result in the family of the beneficiary losing ownership rights in the real property.

The Act does not oblige authorized institutions to offer reverse mortgages, but rather only makes it possible for them to do so. We may only hope that the legislation will serve to encourage the introduction of a new financial service onto the Polish financial market, owing to which individuals possessing rights in real property – particularly senior citizens – will gain access to an additional source of long-term financing.

The institution of the reverse mortgage can serve as a compliment to retirement benefits in Poland, at the same time contributing to an improvement in the financial situation of pensioners in Poland, coupled with the fulfilment of a large number of conditions by both lending institutions and consumers themselves; these include the extremely important concept of responsible lending, ethical lending and "social responsibility on the part of institutions supplying consumer finance services" (Szpringer 2009:56). This is all the more important considering that in the case of the reverse mortgage, the object of the contract is real property which consumers must work for many years to acquire, often repaying loans taken out for that purpose over their entire lives. That property then becomes the basis for payment of a benefit intended to improve their financial situation upon retirement, serving to complement their pension benefits.

"While the reverse mortgage would not seem to play a key role in the retirement system, there is the possibility that it will serve to fill in its gaps. In EU Member States we may observe a positive correlation between income (prior to and during retirement) and wealth in the context of housing and other resources, which means that for those most in need of additional financial liquidity the reverse mortgage is a solution often unavailable to them" (Doling, Overton 2010:57).

It would seem that the state and its authorities should look to aid less wealthy households in taking advantage of the reverse mortgage in order to make the institution universally accessible, particularly for beneficiaries who have ceased their professional activities and for whom the retirement system is not capable of guaranteeing a decent standard of living. At the same time, the state's activity should consist in eliminating detrimental phenomena and dishonest market practices by lending institutions in order for the Act to perform the tasks for which it was created. In this manner the state, which is not entirely capable of developing sufficient solutions for the retirement system in the face of unhelpful demographic trends, should support the functioning of alternative solutions boosting meagre pension benefits by actively working to facilitate the proper and transparent functioning of new services offered by the financial market which meet pressing needs.

Expansion of the scope of entities able to take advantage of the reverse mortgage, rendering it a universally available service provided in a responsible and ethical manner while respecting the interests of both lending institutions and consumers (which need not necessarily be in conflict with each other) requires the cooperation of governments, society and institutions responsible for safeguarding the observance of new regulations and protecting the interests of consumers (Doling, Overton 2010:57).

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The Reverse Mortgage Act of 23 October 2014 (OJ L 2014, item 1585)

Odwrócony kredyt hipoteczny - szansą na uzupełnienie świadczeń emerytalnych w Polsce?

Streszczenie

Niniejszy artykuł prezentuje w ogólnym zarysie zasady udzielania odwróconego kredytu hipotecznego przez banki oraz inne instytucje kredytujące, jak i mechanizmy mające na celu ochronę konsumentów, którzy potencjalnie mogą skorzystać z tej usługi wynikające z ustawy o odwróconym kredycie hipotecznym. Jego celem nie jest szczegółowa analiza i ocena rozwiązań przyjętych w tej ustawie, ale przede wszystkim wskazanie i prezentacja tej nowej usługi finansowej jako pewnej szansy na poprawę sytuacji finansowej seniorów, którzy posiadając pewien wypracowany w trakcie ich aktywności zawodowej majątek, mogą uzupełnić swoje świadczenia emerytalne zaciągając odwrócony kredyt hipoteczny. Zasygnalizowane zostały w nim także pewne potencjalne zagrożenia, nieprawidłowości i niebezpieczeństwa, które mogą towarzyszyć odwróconej hipotece, jak również innym podobnym produktom oferowanym przez niektóre instytucje finansowe w postaci renty dożywotniej, które mogą w praktyce zakłócić prawidłowe funkcjonowanie tej usługi finansowej i tym samym nie wypełniać celów ustanowienia regulacji prawnej odwróconej hipoteki, czy to w modelu sprzedażowym (renta dożywotnia), czy pożyczkowym (odwrócony kredyt hipoteczny).

***Słowa kluczowe**:* odwrócony kredyt hipoteczny, emerytura, konsument, usługi finansowe, renta dożywotnia