

2007 -- S 0388

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO PROPERTY - REVERSE MORTGAGES

Introduced By: Senator Kevin A. Breene

Date Introduced: February 13, 2007

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-25.1-7 of the General Laws in Chapter 34-25.1 entitled "Reverse  
2 Mortgages" is hereby amended to read as follows:

3 ~~34-25.1-7. Term of loan advancements. -- Reverse mortgage loan requirement. --~~ (a)

4 A reverse mortgage loan shall comply with all of the following requirements:

5 (1) Reverse mortgages may be written over any period currently in use by lending  
6 institutions, with the outstanding balance due and payable upon the first to occur of the maturity  
7 of the loan or the mortgagor's default thereunder. ~~Interest on outstanding advances may either be~~  
8 ~~charged to the mortgagor throughout the term of the loan, or may be~~ A reverse mortgage loan  
9 may provide for a fixed or adjustable interest rate or combination thereof, including compound  
10 interest. Interest on a reverse mortgage loan shall be accumulated and due upon the first to occur  
11 of the maturity of the loan or the mortgagor's default thereunder.

12 ~~(b) A portion of the mortgage proceeds of a reverse mortgage may be used to purchase~~  
13 ~~an immediate or deferred life annuity contract from companies authorized to issue annuity~~  
14 ~~contracts in this state. In such cases, the monthly annuity payments may be used to pay interest~~  
15 ~~payments on the mortgage loan with the remainder forwarded to the mortgagor. Repayment of~~  
16 ~~principal in such cases would occur upon the first to occur of the maturity of the loan, the~~  
17 ~~mortgagor's default thereunder or the closing of the mortgagor's estate.~~

18 (2) Prepayment, in whole or in part, shall be permitted without penalty at any time  
19 during the term of the reverse mortgage loan. For the purposes of this section, penalty does not

1 include any fees, payments, or other charges that would have otherwise been due upon the reverse  
2 mortgage being due and payable.

3 (3) If a reverse mortgage loan provides for periodic advances to a borrower, these  
4 advances shall not be reduced in amount or number based on any adjustment in the interest rate.

5 (4) A lender who fails to make loan advances as required in the loan documents, and fails  
6 to cure an actual default after notice as specified in the loan documents, shall forfeit to the  
7 borrower treble the amount wrongfully withheld plus interest at the legal rate.

8 (5) The reverse mortgage loan may become due and payable upon the occurrence of any  
9 one of the following events:

10 (i) The home securing the loan is sold or title to the home is otherwise transferred.

11 (ii) All borrowers cease occupying the home as a principal residence, except as provided  
12 in subdivision (f).

13 (iii) For a period of longer than twelve (12) consecutive months, a mortgagor fails to  
14 occupy the property because of physical or mental illness and the property is not the principal  
15 residence of at least one other mortgagor.

16 (iv) Any fixed maturity date agreed to by the lender and the borrower occurs.

17 (v) An event occurs which is specified in the loan documents and which jeopardizes the  
18 lender's security.

19 (6) Repayment of the reverse mortgage loan shall be subject to the following additional  
20 conditions:

21 (i) Temporary absences from the home not exceeding one hundred twenty (120)  
22 consecutive days shall not cause the mortgage to become due and payable.

23 (ii) Extended absences from the home exceeding one hundred twenty (120) consecutive  
24 days, but less than one year, shall not cause the mortgage to become due and payable if the  
25 borrower has taken prior action which secures and protects the home in a manner satisfactory to  
26 the lender, as specified in the loan documents.

27 (iii) The lender's right to collect reverse mortgage loan proceeds shall be subject to the  
28 applicable statute of limitations for written loan contracts. Notwithstanding any other provision of  
29 law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes  
30 due and payable as provided in the loan agreement.

31 (iv) The lender shall prominently disclose in the loan agreement any interest rate or other  
32 fees to be charged during the period that commences on the date that the reverse mortgage loan  
33 becomes due and payable, and that ends when repayment in full is made.

34 (7) A lender shall not require an applicant for a reverse mortgage to purchase an annuity

1 as a condition of obtaining a reverse mortgage loan. A reverse mortgage lender or a broker  
2 arranging a reverse mortgage loan shall not:

3 (i) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before  
4 the expiration of the right of the borrower to rescind the reverse mortgage agreement.

5 (ii) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the  
6 reverse mortgage or before the expiration of the right of the borrower to rescind the reverse  
7 mortgage agreement.

8 (8) Notwithstanding anything in this chapter 34-25.1 to the contrary, the penalties, fees,  
9 payments, and other charges payable with respect to a reverse mortgage loan shall not exceed, or  
10 be other than, those permitted to be charged under HUD's Home Equity Conversion Mortgage  
11 Program (if such program shall cease to exist, the director of the department of business  
12 regulation shall have the authority to determine permissible penalties, fees, payments, and other  
13 charges payable with respect to a reverse mortgage loan).

14 (e)(9) Any reverse mortgage made in the state prior to ~~passage of this act~~ July 14, 2006,  
15 the effective date of P.L. 2006, chapter 625, section 1, shall be deemed in compliance with  
16 chapter 34-25.1 as ~~amended by this act~~ in effect as of July 14, 2006 if made pursuant to the  
17 provisions of section 255 of the National Housing Act and the regulations thereunder.

18 SECTION 2. Chapter 34-25.1 of the General Laws entitled "Reverse Mortgages" is  
19 hereby amended by adding thereto the following sections:

20 **34-25.1-9. Required counseling.** -- (a) Within ten (10) business days after application is  
21 made by a prospective mortgagor(s), but not less than ten (10) business days before closing of the  
22 loan, mortgagees shall inform applicants that reverse mortgage counseling is required before the  
23 reverse mortgage loan can be closed, and shall provide the names and addresses of reverse  
24 mortgage counselors listed with the U.S. department of housing and urban development ("HUD";  
25 in the event that HUD shall cease to maintain such list of reverse mortgage counselors, the  
26 director of the department of business regulation shall develop and maintain such a list). An  
27 original certificate, dated and signed by both the counselor and the mortgagor(s), certifying that  
28 the counseling required by this section 34-25.1-9 has taken place, must be delivered to the  
29 mortgagee at least seven (7) days prior to the closing of the loan. The director of the department  
30 of business regulation shall have the right to prescribe the form of certificate for this purpose.

31 Counseling must comply with the following requirements: (i) it must be conducted in  
32 person; however, if the prospective mortgagor(s) cannot or choose(s) not to travel to a housing  
33 counseling agency and cannot be visited by a counselor in their home, telephone counseling shall  
34 be permitted by counseling agencies authorized by HUD to conduct such telephone counseling

1 (in the event that HUD shall cease to maintain a list of telephone counselors, the director of the  
2 department of business regulation shall develop and maintain such a list); (ii) the reverse  
3 mortgage loan must close within one hundred eighty (180) days after the prospective  
4 mortgagor(s) sign(s) the counseling certificate; if the reverse mortgage loan does not close within  
5 such one hundred eighty (180) day period, the parties shall be required to again comply with the  
6 counseling requirements of this section; and (iii) mortgagees must provide prospective  
7 mortgagors with a list of no fewer than three (3) independent, authorized counseling agencies in  
8 the state (the mortgagee shall not recommend a counseling agency that is an affiliate of the  
9 mortgagee).

10 In the event that counseling no longer shall be available free of charge, the director of the  
11 department of business regulation shall have the authority to determine the allowable fees, if any,  
12 to be charged for counseling, the parties' respective responsibilities for such fees, and the terms  
13 and conditions upon which such fees may be charged and collected.

14 Counseling must include, without limitation, discussion of the following with the  
15 prospective mortgagor(s):

16 (1) Options other than a reverse mortgage that are available to the mortgagor(s),  
17 including other housing, social service, health, and financial options;

18 (2) A review of the advantages and disadvantages of reverse mortgage programs;

19 (3) Other reverse mortgage options that are or may become available to the mortgagor(s),  
20 such as other reverse mortgages, sale-leaseback financing, deferred payment loans, and property  
21 tax deferral;

22 (4) The financial implications of entering into a reverse mortgage;

23 (5) A disclosure that a reverse mortgage may have tax consequences, affect eligibility for  
24 assistance under federal and state programs, and have an impact on the estate and heirs of the  
25 homeowner(s), as well as an explanation of how the reverse mortgage may affect the estate and  
26 public benefits of the mortgagor(s);

27 (6) An explanation of the lending process;

28 (7) A discussion of the supplemental income needs of the mortgagor(s);

29 (8) An opportunity to ask questions of the counselor;

30 (9) Such other topics as shall be required to be addressed with respect to a reverse  
31 mortgage pursuant to USC section 1715z-20, and/or any regulations promulgated pursuant  
32 thereto; and

33 (10) Such other topics as shall be required by the director of the department of business  
34 regulation to be addressed.

1           **34-25.1-10. Pre-closing disclosures.** -- (a) Within ten (10) business days after  
2 application is made by a prospective reverse mortgage mortgagor, but not less than ten (10)  
3 business days before closing of the loan, all mortgagees shall provide in writing all of the  
4 following information to each prospective reverse mortgage mortgagor:

5           (1) The mortgagor's rights, obligations, and remedies with respect to the mortgagor's  
6 temporary absence from the home, late payments by the mortgagee, and payment default by the  
7 mortgagee;

8           (2) Whether the loan is recourse or non-recourse;

9           (3) The right of the mortgagor to mortgage less than the full value of the home, if  
10 permitted by the reverse mortgage loan contract;

11           (4) A schedule, if applicable, and explanation of payments to the mortgagor pursuant to  
12 the terms of the mortgage agreement and whether or not property taxes and insurance premiums  
13 are to be deducted.

14           (5) A schedule of outstanding debt over time, if applicable;

15           (6) Repayment date, if a fixed term loan;

16           (7) Method of repayment and schedule, if any;

17           (8) All contractual contingencies, including lack of home maintenance and other default  
18 provisions which may cause the loan to become due and payable or result in a forced sale of the  
19 mortgaged property;

20           (9) Interest rate and annual percentage rate, as well as a table of projected "Total Annual  
21 Loan Cost Rates" calculated in accordance with the provisions of section 226.33 of regulation Z  
22 (12 CFR 226.33) of the federal truth in lending act, 15 USC section 1601 et seq. applicable under  
23 various loan terms and appreciation rates and interest rates applicable at sample ages of the  
24 mortgagors; and for a reverse mortgage loan for a specified term, total interest payable thereon;  
25 and with respect to variable interest rates, the circumstances under which the interest rate may  
26 increase, the effect of any such increase, and the limitations on increases in the interest rate;

27           (10) Description of prepayment and, if applicable, refinancing features; and

28           (11) All closing costs;

29           (12) All service fees and all other costs to be charged during the term of the loan;

30           (13) Any interest rate or other fees to be charged during the period that commences on  
31 the date that the reverse mortgage loan becomes due and payable and that ends when repayment  
32 in full is made; and

33           (14) All other information as shall be required by the director of the department of  
34 business regulation to be disclosed.

1           **34-25.1-11. Annual account statements and other required and disclosures. –**

2           (a) At the closing of the reverse mortgage loan, the mortgagee shall provide to the  
3 mortgagor(s) the name of the mortgagee's employee or agent who has been designated  
4 specifically to respond to inquires concerning reverse mortgage loans. This information shall be  
5 provided by the mortgagee to the mortgagor(s) at least annually, and whenever the information  
6 concerning the designated employee or agent changes.

7           (b) On an annual basis and when the loan becomes due, the mortgagee shall issue to the  
8 mortgagor, without charge, a statement of account regarding the activity of the mortgage for the  
9 preceding calendar year, or for the period since the last statement of account was provided. The  
10 statement shall include all of the following information for the preceding year;

11           (1) The outstanding balance of the loan at the beginning of the statement period;

12           (2) Disbursements to the mortgagor;

13           (3) The total amount of interest added to the outstanding balance of the loan;

14           (4) Any property taxes, hazard insurance premiums, mortgage insurance premiums, or  
15 assessments paid by the mortgagee;

16           (5) Payments made to the mortgagee;

17           (6) The total mortgage balance owed to date;

18           (7) The remaining amount available to the mortgagor in reverse mortgage loans wherein  
19 proceeds have been reserved to be disbursed in one or more lump sum amounts; and

20           (8) All other information as shall be required by the director of the department of  
21 business regulation to be disclosed.

22           **34-25.1-12. Non-binding on the applicant. --** An applicant for a reverse mortgage loan  
23 shall not be bound for at least seven (7) days after all of the following shall have occurred: (i) the  
24 applicant's acceptance, in writing, of the mortgagee's written commitment to make the loan; (ii)  
25 the applicant's completion of the counseling required pursuant to section (a) above; and (iii) the  
26 applicant's receipt, in writing, of all of the information required to be disclosed pursuant to  
27 section (b) above. No reverse mortgage loan may be closed during this seven (7) day period, and  
28 this seven (7) day period shall be in addition to any right of rescission the mortgagors may have  
29 the following the closing of the loan.

30           **34-25.1-13. Attorneys-In-Fact. --** All mortgagees shall require any person who executes  
31 reverse mortgage loan documents as attorney-in-fact for another to deliver at the closing a  
32 written, notarized certification as to all of the following: that the power of attorney is then in full  
33 force and effect and has not been revoked or otherwise terminated; and that the attorney-in-fact  
34 acknowledges his or her fiduciary obligations to the principal pursuant to the power of attorney

1 [with respect to the reverse mortgage loan.](#)

2           **34-25.1-14. Regulations.** -- [The director of the department of business regulation shall](#)  
3 [have the authority to promulgate such regulations as shall be reasonably necessary to carry out](#)  
4 [this section 34-25.1-9.](#)

5           SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PROPERTY - REVERSE MORTGAGES

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1           This act would create new requirements and guidelines in the application process for  
2 mortgagors offering reverse loan mortgages, including counseling provisions, disclosures  
3 requirements to the prospective mortgagee, and guidelines for legal action in the event of a  
4 default on the reverse loan mortgage.

5           This act would take effect upon passage.

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