
LEGISLATIVE NOTICE – MEMBERS ONLY

July 21, 2008

RHODE ISLAND REVERSE MORTGAGE LEGISLATION

2008 -- S. 2598 SUBSTITUTE A

On June 6, 2008, Rhode Island enacted legislation regulating reverse mortgages. An official signing ceremony took place on June 20, 2008 where Governor Carcieri signed the legislation.

BACKGROUND

In an official signing ceremony on June 20, 2008 [Governor Carcieri](#) signed into law reverse mortgage legislation aimed at protecting senior homeowners. The bill, which was technically signed and became law on June 6, 2008, takes effect on January 1, 2009. During the course of a two year process, NRMLA collaborated with the state legislators, members of the RI Dept. of Elderly Affairs, the State Business and Regulatory Offices, AARP and others. Highlighted below are the provisions from the bill that was signed by Governor Carcieri. You may view a copy of the signed law [here](#).

BILL PROVISIONS

SECTION 1. Sections 34-25.1-7 and 34-25.1-8 of the General Laws in Chapter 34-25.1 entitled "Reverse Mortgages" are hereby amended to read as follows:

SECTION 34-25.1-7 (1)

- Reverse mortgages may be written over any period in use by lending institutions.
- The outstanding balance, or in some cases the entire loan, may become due and payable either at the maturity of the loan or if the mortgagor defaults on the loan.
- A reverse mortgage loan may have a fixed or adjustable interest rate or combination thereof, including compound interest.
- Interest on a reverse mortgage loan shall be accumulated and due upon the first to occur of either the maturity of the loan or the mortgagor's default (which causes the entire loan to become due and payable).

Section 34-25.1-7(2): Prepayment Penalty

- If the mortgagee waived all the usual fees, a Prepayment Penalty may be imposed;

- Penalty must be calculated as a percentage of the available credit commitment stated in the loan documents and cannot exceed the total usual fees initially absorbed, and must be on a prorated basis by the percentage of months remaining in the full prepayment penalty term.
- A Reverse Mortgage may be prepaid without penalty, in whole or in part, if under conditions outlined in **Section 34-25.1-7(5)**

Section 34-25.1-7(3)

- In cases where a reverse mortgage loan provides for periodic advances to a borrower, advances shall not be reduced in amount or number based on any adjustment in the interest rate.

Section 34-25.1-7(4)

- A lender that is found by an appropriate court to have failed, beyond any applicable notice or cure periods, to make loan advances as required in the loan documents, shall forfeit to the borrower treble the amount wrongfully withheld plus interest at the legal rate.

Section 34-25.1-7(5)

The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

- The home securing the loan is sold or title to the home is otherwise transferred.
- All mortgagors cease occupying the home as a principal residence, except as provided in subdivision (6).
- For a period of longer than twelve (12) consecutive months, a mortgagor fails to occupy the property because of physical or mental illness and the property is not the principal residence of at least one other mortgagor.
- Any fixed maturity date agreed to by the lender and the mortgagor occurs.
- An event occurs which is specified in the loan documents and which jeopardizes the lender's security.

Section 34-25.1-7(6)

- Temporary & Extended absences shall not cause the loan to become due and payable.
- Temporary absences from home may not exceed 120 days
- Extended absences greater than 120 days and less than 12 months are permitted as long as mortgagor takes action to secure home in satisfactory manner to the lender.
- The lender's right to collect reverse mortgage loan proceeds shall be subject to the applicable statute of limitations for written loan contracts.
- Statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement.
- The lender shall prominently disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

Section 34-25.1-7(7)

Lender may not:

- Require a purchase of an annuity as condition for obtaining a reverse mortgage,
- Offer an annuity to a mortgagee prior to the closing of the loan or before the expiration of rescission period, or
- Refer mortgagor to anyone for the purchase of an annuity prior to closing/end of rescission period.

Section 34-25.1-7(8)

The following fees, costs and payments may be charged in connection with the origination and closing of a reverse mortgage loan as long as they are properly disclosed to the mortgagor(s):

- Application fee (may be collected prior to closing)- must be designated as application fee, reasonably related to the services to be performed, and may not be a percentage of the principal amount of the loan or amount financed;
- Loan origination fee;
- Document preparation cost (must be reasonably related to service provided);
- Property appraisal or surveying costs;
- Cost of a title examination, an abstract of title or title insurance;
- Cost of a tax search for tax liens existing at the time of closing if such search is not included in the title examination;
- Payment to discharge any existing liens on the real property securing the loan;
- Recordation cost;
- The cost of actual attorneys' fees charged to the lender in connection with the closing of the loan;
- Credit report cost;
- Cost of Flood zone search;
- Cost of an inspection to be paid in connection with the origination of the loan but not subsequent to the loan closing;
- Repairs contracted for at or before the loan closing irrespective of whether such repairs are completed at the time of closing and/or whether the funds are held in escrow;
- Cost of purchasing mortgage insurance;
- Payment of real estate taxes and property insurance; and
- Other miscellaneous costs shall be permitted to be charged by the Director of the RI Dept. of Business Regulation.

Section 34-25.1-7(9)

Any reverse mortgage made in Rhode Island prior to July 14, 2006, shall be deemed in compliance with chapter 34-25.1 if made pursuant to the provisions of [section 255 of the National Housing Act](#) and the regulations thereunder.

Section 34-25.1-7(10)

With the exception of subsections 34-25.1-7(a)(4), 34-25.1-7(a)(6)(iii), 34-25.1-7(a)(7), and 34-25.1-7(a)(9), section 34-25.1-7 shall not apply to:

- any national bank, federal savings bank or financial institution (as defined in section 19-1-1) that is insured by the Federal Deposit Insurance Corporation or to the wholly owned subsidiary of any of the foregoing, or;
- any reverse mortgage loan that is subject to and that complies with [12 USC section 1715z-20](#) and the federal regulations promulgated with respect thereto (including without limitation [24 CFR Part 206](#)).

Section 34-25.1-8. Mortgagees authorized to take reverse mortgages.

(a) The following mortgagees are authorized to take reverse mortgages provided that such loans comply with the requirements of law, if any, relating to loans secured by real estate mortgages made by such institutions and with the requirements of this chapter:

- Domestic building-loan associations (whether organized by special act of the general assembly or pursuant to the provisions of chapter 22 of title 19),
- foreign building-loan associations (subject to the provisions of chapter 24 of title 19), savings and loan associations (as organized under the laws of the U.S.A.),
- credit unions (subject to the provisions of chapter 21 of title 19),

- loan and investment banks (subject to the provisions of chapter 20 of title 19) and
- other financial institutions are expressly authorized to make loan secured by mortgages entitled as provided in section 34-25.1-1 and containing the provisions required in sections 34-25.1-1 and 34-25.1-2 to be contained in the provisions of the mortgages;

(b) Other mortgagees are authorized to make loans on the security of such mortgages if such mortgages comply with the requirements of this chapter.

(c) A reverse mortgage loan officer must be registered/licensed as a mortgage loan originator, unless otherwise exempt.

(d) Director of the RI Dept. of Business Regulation or his or her designee has the authority to revoke licenses (pursuant to chapter 19-14-13) of any lender that fails to comply with the requirements of this chapter.

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

Section 34-25.1-9. Required counseling

(a) All lenders shall deliver to all reverse mortgage loan applicants a statement, if available, prepared by the RI Dept. of Elderly Affairs on the advisability and availability of independent counseling and information services.

- With respect to every reverse mortgage loan, the prospective mortgagor(s) shall complete a reverse mortgage counseling program.
- An original certificate, dated and signed by both the counselor and the mortgagor(s), certifying that the counseling required by section 34-25.1-9 has taken place, shall be delivered to the mortgagee at least three (3) business days prior to the closing of the loan.
- The lender shall not process a reverse mortgage loan application, other than ordering an automated valuation model and a preliminary title search, until the counseling required by this section has been completed and the certificate of counseling is delivered to the mortgagee.
- RI Dept. Elderly Affairs will establish and maintain list of acceptable counseling program for in person and/or telephone counseling; list will be made available to all lenders and the public.

(b) The reverse mortgage counseling program shall include, but is not limited to, all matters enumerated in subsections 34-25.1-9(e)(1) through (6).

- A counseling agency approved by the U.S. Dept. of Housing and Urban Development to provide reverse mortgage counseling shall be deemed to be approved to provide the counseling required by section 34-25.1-9, provided that: (1) the counseling agency is not affiliated with the reverse mortgage lender; and (2) the counseling agency complies with the counseling requirements of section 34-25.1-9.
- The Director of the RI Dept. of Elderly Affairs shall have the right to prescribe the form of counseling certificate that will meet the requirements of subsection 34-25.1-9(a).

(c) Counseling shall comply with the following requirements:

- Counseling shall be conducted in person; however, telephone counseling by authorized agencies is permitted if the prospective mortgagor(s) cannot or choose(s) not to travel to a counseling agency and cannot be visited by a counselor in their home.

- Counseling certificate is valid for only one hundred eighty (180) days. If the reverse mortgage loan does not close within the 180 day period, the prospective mortgagor is required to receive counseling again.
- Must supply at least three (3) independent, authorized counseling agencies in the state. The mortgagee may not recommend a counseling agency that is an affiliate of the mortgagee.

(d) If counseling service is not free, the mortgagee may pay the cost of the counseling if all other sources or funding the counseling by legitimate sources including, without limitation, non-profit organizations and grants have not been obtained.

- In the event that [12 USC section 1715z-20](#) or the federal regulations expressly prohibit a mortgagee from being responsible for the cost of counseling, then subsection 34-25.1-9(d) shall not apply to a reverse mortgage loan that is subject to [12 USC section 1715z-20](#) and the federal regulations promulgated with respect thereto.

(e) Counseling shall include discussion of the following:

- Options other than a reverse mortgage that are available to the mortgagor(s), including other housing, social service, health, and financial options;
- Other home equity conversion options that are or may become available to the mortgagor(s), such as other reverse mortgages, sale-leaseback financing, deferred payment loan, and property tax deferral;
- Financial implications of entering into a reverse mortgage;
- Disclosure of potential
 - Tax consequences,
 - Affect eligibility for assistance under federal and state programs,
 - Impact on the estate and heirs of the homeowner(s), and
 - Explanation of how the reverse mortgage may affect the estate and public benefits of the mortgagor(s); and
- Any other topics required by [12 U.S.C. section 1715z-20](#), and/or any regulations promulgated pursuant thereto; and/or additional topics required by the Director of the RI Dept. of Elderly Affairs.

(f) Subsections 34-25.1-9(b), (c) and (e) shall not apply to any reverse mortgage loan that is subject to [12 USC section 1715z-20](#) and the federal regulations promulgated with respect thereto; provided that such loan complies with the counseling requirements set forth in [12 USC section 1715z-20](#) and the federal regulations promulgated with respect thereto (including without limitation [24 CFR Part 206](#)).

Section 34-25.1-10. Pre-closing disclosures

(a) At least three (3) business days before closing of the loan, all mortgagees, or their authorized licensed representative must provide, in writing, the following information to each prospective reverse mortgage mortgagor:

- All disclosers required in connection with a reverse mortgage loan pursuant to the Truth in Lending Act ([15 USC section 1601 et seq.](#)), Regulation Z ([12 CFR Part 226](#)), and [12 USC section 1715z-20](#) and the federal regulations promulgated with respect thereto (including without limitation [24 CFR Part 206](#)); and
- All other disclosers as required by the Director of the RI Dept. of Business Regulation.

Section 34-25.1-11. Annual account statements and other required disclosures

(a) At the closing, the mortgagee shall provide to the mortgagor(s):

- Contact information for the mortgagee's (or its assignee's or servicing agent's, as the case may be) employee(s) or agent(s) who have been designated specifically to respond to inquires concerning reverse mortgage loans.
- Information shall be provided by the mortgagee (or its assignee or servicing agent, as the case may be) to mortgagor(s) at least annually, and whenever this contact information concerning the designated employee(s) or agent(s) changes.

(b) 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 on an annual basis and when the loan becomes due, the mortgagee shall issue to the mortgagor, without charge. The statement shall include all of the following information for the preceding year:

- Outstanding balance of the loan at the beginning of the statement period;
- Disbursements to the mortgagor;
- Total amount of interest added to the outstanding balance of the loan;
- Any property taxes, hazard insurance premiums, mortgage insurance premiums, or assessments paid by the mortgagee;
- Payments made to the mortgagee;
- Total mortgage balance owed to date;
- Remaining amount available to the mortgagor in reverse mortgage loans wherein proceeds have been reserved to be disbursed in one or more lump sum amounts; and
- All other disclosures as required by the Director of the RI Dept. of Business Regulation.

Section 34-25.1-12. Non-binding on the applicant

- Applicant must be given a three business day review period prior to closing of the loan; this is in addition to the three day right of rescission following the closing of the loan
- An applicant for a reverse mortgage loan shall not be bound for at least three (3) business days after all of the following shall have occurred:
 - Applicant's execution and delivery to the mortgagee of a fully completed application for the reverse mortgage loan;
 - Applicant's delivery to the mortgagee of the requisite fully completed and executed certificate in proper form evidencing the applicant's completion of the counseling required pursuant to section 37-25.1-9 (as to any reverse mortgage loan that is exempt, pursuant to subsection 34-25.1-9(g), from the requirements of subsections 34-25.1-9(b), (c) and (e), such certificate must meet the requirements of 12 USC section 1715z-20 and the federal regulations promulgated with respect thereto); and
 - Applicant's receipt, in writing, of all of the information required to be disclosed pursuant to section 37-25.1-10.
- No costs in connection with the application and processing of a proposed reverse mortgage loan shall be imposed upon any applicant for a reverse mortgage until the events described in subsections 34-25.1-12 (1) and (2) have occurred.
- Each mortgagee shall inform each applicant in writing of the applicant's rights pursuant to section 34-25.1-12 simultaneously with providing the application to the applicant for completion.

Section 34-25.1-13. Attorneys-in-fact -- Guardians

- All mortgagees shall require any person who executes reverse mortgage loan documents as attorney-in-fact for another to deliver at the closing a written, notarized certification as to all of the following:

- That the power of attorney is then in full force and effect and has not been revoked or otherwise terminated; and
- Attorney-in-fact acknowledges his or her fiduciary obligations to the principal pursuant to the power of attorney with respect to the reverse mortgage loan.

Section 34-25.1-14. Regulations

- Director of the RI Dept. of Business Regulation has the authority to create regulations as necessary in regards to sections 34-25.1-10 through 34-25.1-16; 34-25.1-7; and 34-25.1-9.

Section 34-25.1-15. Property held in name or trust

- Lien priority preserved
- (a) Cash advances made under a reverse mortgage shall be made by the lender to the mortgagor. In the event that legal title to the property encumbered by a reverse mortgage is held in trust:
- Reverse mortgage proceeds may be received by the occupant of the property provided that the occupant is a beneficiary of the trust;
 - References in subdivision 34-25.1-7(a)(5) to the mortgagor shall be deemed to refer to the occupant of the property provided that the occupant is a beneficiary of the trust;
 - References in subdivision 34-25.1-7(s)(6) to absences from the home shall be deemed to refer to the occupant of the property provided that the occupant is a beneficiary of the trust.

Section 34-25.1-16: Liberal construction

- Law will be interpreted liberally to ensure that reverse mortgage borrowers fully understand the ramifications of entering into a reverse mortgage transaction.

- Effective date January 1, 2009.