

2007 -- H 5739 SUBSTITUTE A

LC01789/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO PROPERTY - REVERSE MORTGAGES

Introduced By: Representative Richard W. Singleton

Date Introduced: February 28, 2007

Referred To: House 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.~~
4 **Reverse mortgage loan requirements.** -- (a)

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

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

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

19 (2) Prepayment, in whole or in part, shall be permitted without penalty at any time

1 during the term of the reverse mortgage loan. For the purposes of this section, penalty does not
2 include any fees, payments, or other charges that would have otherwise been due upon the reverse
3 mortgage being due and payable.

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

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

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

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

12 (ii) All borrowers cease occupying the home as a principal residence, except as provided
13 in subdivision (6).

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

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

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

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

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

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

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

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

1 (7) A lender shall not require an applicant for a reverse mortgage to purchase an annuity
2 as a condition of obtaining a reverse mortgage loan. A reverse mortgage lender or a broker
3 arranging a reverse mortgage loan shall not:

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

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

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

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

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

21 **34-25.1-9. Required counseling.** -- (a) Within ten (10) business days after application is
22 made by a prospective mortgagor(s), but not less than ten (10) business days before closing of the
23 loan, mortgagees shall inform applicants that reverse mortgage counseling is required before the
24 reverse mortgage loan can be closed, and shall provide the names and addresses of reverse
25 mortgage counselors listed with the U.S. department of housing and urban development ("HUD";
26 in the event that HUD shall cease to maintain such list of reverse mortgage counselors, the
27 director of the department of business regulation shall develop and maintain such a list). An
28 original certificate, dated and signed by both the counselor and the mortgagor(s), certifying that
29 the counseling required by this section 34-25.1-9 has taken place, must be delivered to the
30 mortgagee at least three (3) days prior to the closing of the loan. The director of the department of
31 business regulation shall have the right to prescribe the form of certificate for this purpose.

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

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

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

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

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

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

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

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

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

28 (6) An explanation of the lending process;

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

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

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

34 (10) Such other topics as shall be required by the director of the department of business

1 regulation to be addressed.

2 **34-25.1-10. Pre-closing disclosures.** -- (a) Within ten (10) business days after
3 application is made by a prospective reverse mortgage mortgagor, but not less than three (3)
4 business days before closing of the loan, each mortgagee must provide to each prospective
5 reverse mortgage mortgagor a description in writing of the material differences, if any (including
6 without limitation differences in penalties, fees, principal and/or interest payments, and other
7 charges), in the reverse mortgage loan from the type of reverse mortgage loan as to which home
8 equity conversion mortgage (HECM) insurance is available from the federal government under its
9 program set out in 12 USC section 1715z-20 and the federal regulations promulgated with respect
10 thereto, including without limitation 24 CFR Part 206. This same written description must also be
11 delivered, prior to the counseling session, by the mortgagee to the reverse mortgage counselor
12 selected by the prospective reverse mortgage mortgagor to provide counseling pursuant to section
13 34-25.1-9 above.

14 (b) At least three (3) business days before closing of the loan, all reverse mortgagees shall
15 provide in writing all of the following information to each prospective reverse mortgage
16 mortgagor:

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

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

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

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

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

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

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

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

32 (9) Interest rate and annual percentage rate, as well as a table of projected "Total Annual
33 Loan Cost Rates" calculated in accordance with the provisions of section 226.33 of regulation Z
34 (12 CFR 226.33) of the federal truth in lending act, 15 USC section 1601 et seq. applicable under

1 various loan terms and appreciation rates and interest rates applicable at sample ages of the
2 mortgagors; and for a reverse mortgage loan for a specified term, total interest payable thereon;
3 and with respect to variable interest rates, the circumstances under which the interest rate may
4 increase, the effect of any such increase, and the limitations on increases in the interest rate;

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

6 (11) All closing costs;

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

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

11 (14) All other information as shall be required by the director of the department of
12 business regulation to be disclosed;

13 (15) In upper case boldface type, a description of the material differences, if any
14 (including without limitation differences in penalties, fees, principal and/or interest payments, and
15 other charges), in the reverse mortgage loan from the type of reverse mortgage loan as to which
16 home equity conversion mortgage (HECM) insurance is available from the federal government
17 under its program set out in 12 USC section 1715z-20 and the federal regulations promulgated
18 with respect thereto, including without limitation 24 CFR Part 206; and

19 (16) All interest and/or principal payments, if any, required to be paid during the term of
20 the loan.

21 **34-25.1-11. Annual account statements and other required and disclosures. –**

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

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

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

32 (2) Disbursements to the mortgagor;

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

34 (4) Any property taxes, hazard insurance premiums, mortgage insurance premiums, or

- 1 assessments paid by the mortgagee;
- 2 (5) Payments made to the mortgagee;
- 3 (6) The total mortgage balance owed to date;
- 4 (7) The remaining amount available to the mortgagor in reverse mortgage loans wherein
- 5 proceeds have been reserved to be disbursed in one or more lump sum amounts; and
- 6 (8) All other information as shall be required by the director of the department of
- 7 business regulation to be disclosed.

8 **34-25.1-12. Non-binding on the applicant.** -- An applicant for a reverse mortgage loan
9 shall not be bound for at least three (3) business days after all of the following shall have
10 occurred: (i) the applicant's acceptance, in writing, of the mortgagee's written commitment to
11 make the loan; (ii) the applicant's completion of the counseling required pursuant to, as
12 applicable, either (x) section 37-25.1-9 above or (y) 12 USC section 1715z-20 and the federal
13 regulations promulgated with respect thereto, including without limitation 24 CFR Part 206; and
14 (iii) the applicant's receipt, in writing, of all of the information required to be disclosed pursuant
15 to section 37-25.1-10 above. No reverse mortgage loan may be closed prior to the expiration of
16 this three (3) business day period, and this three (3) business day period shall be in addition to
17 any right of rescission the mortgagors may have following the closing of the loan.

18 **34-25.1-13. Attorneys-In-Fact.** -- All mortgagees shall require any person who executes
19 reverse mortgage loan documents as attorney-in-fact for another to deliver at the closing a
20 written, notarized certification as to all of the following: that the power of attorney is then in full
21 force and effect and has not been revoked or otherwise terminated; and that the attorney-in-fact
22 acknowledges his or her fiduciary obligations to the principal pursuant to the power of attorney
23 with respect to the reverse mortgage loan.

24 **34-25.1-14. Regulations.** -- The director of the department of business regulation shall
25 have the authority to promulgate such regulations as shall be reasonably necessary to carry out
26 these sections 34-25.1-9 through 34-25.1-15.

27 **34-25.1-15. Exemptions.** -- The applicability of this chapter is limited as follows:

28 (a) the provisions of section 34-25.1-7 [other than 34-25.1-7(a)(4) and (7)] shall not apply
29 to (x) any national bank, federal savings bank or financial institution (as defined in section 19-1-
30 1) that is insured by the federal deposit insurance corporation or to the wholly owned subsidiary
31 of any of the foregoing or (y) any reverse mortgage loan that is subject to 12 USC section 1715z-
32 20 and the federal regulations promulgated with respect thereto (including without limitation 24
33 CFR Part 206);

34 (b) Section 34-25.1-9 shall not apply to any reverse mortgage loan that is subject to the

1 counseling requirements set forth in 12 USC section 1715z-20 and the federal regulations
2 promulgated with respect thereto (including without limitation 24 CFR Part 206;)

3 (c) Subject to the right of the director of the department of business regulation to require
4 a different form of counseling certificate, a fully completed and properly executed counseling
5 certificate that meets the requirements of 12 USC section 1715z-20 and the federal regulations
6 promulgated with respect thereto (including without limitation 24 CFR Part 206) shall be deemed
7 to satisfy the requirements set forth in the first paragraph of section 35-25.1-9 as to the required
8 form of counseling certificate that must be delivered prior to loan closing.

9 **34-25.1-16. Liberal construction.** -- This chapter shall be construed liberally in aid of its
10 purpose of ensuring that reverse mortgage borrowers fully understand the ramifications of
11 entering into a reverse mortgage transaction.

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

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LC01789/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY - REVERSE MORTGAGES

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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