



Legal Counsel to
the Nation's Financial
Services Industry

National Reverse
Mortgage Lenders
Association

2009 Annual Meeting
and Tradeshow

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State Law Developments
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Overview

- (Very Brief) “SAFE” Act Update
- Trends and Recently Enacted State Laws Expressly Regulating Reverse Mortgages
- Recently Vetoed State Reverse Mortgage Legislation
- Illinois High Risk Home Loan Act



SAFE Act – Implementation Status

- 49 states and the District of Columbia have enacted legislation
 - ◆ Only Minnesota has not introduced legislation
- 13 states have adopted implementing regulations
 - ◆ Regulations are pending in 12 states
- Some states' SAFE Acts impose additional restrictions/ requirements
 - ◆ Advertising
 - ◆ Appraisals
 - ◆ Compensation (e.g., disclosures)
 - ◆ Exams for non-licensees (e.g., customers, any person with interest in the loan)
 - ◆ Fund for paying NMLSR costs
 - ◆ In-state office
 - ◆ Licensee duties (e.g., fiduciary, good faith)
 - ◆ Loan restrictions
 - ◆ Reasonable ability to repay
 - ◆ Recovery fund for borrowers
 - ◆ Trust account for borrower funds



SAFE Act – Federal Regs

- HUD's proposed regulation on SAFE is now on the Hill, and is expected to be released in December
- The final regulation from the banking agencies was released late last week
 - ◆ Exception for employee who has never been registered through NMLSR as an LO and who has acted as an LO for five or fewer residential mortgage loans in past 12 months
 - ◆ Employees who engage only in loan mods are not LOs
 - ◆ Once NMSLR is available, employees must register within 180 days



SAFE Act – Imbalance between state licensing and federal registration costs

- Estimated cost of licensing 1 loan originator in all states
 - ◆ State mortgage lender: \$23,575
 - ◆ Bank or op sub mortgage lender: \$75

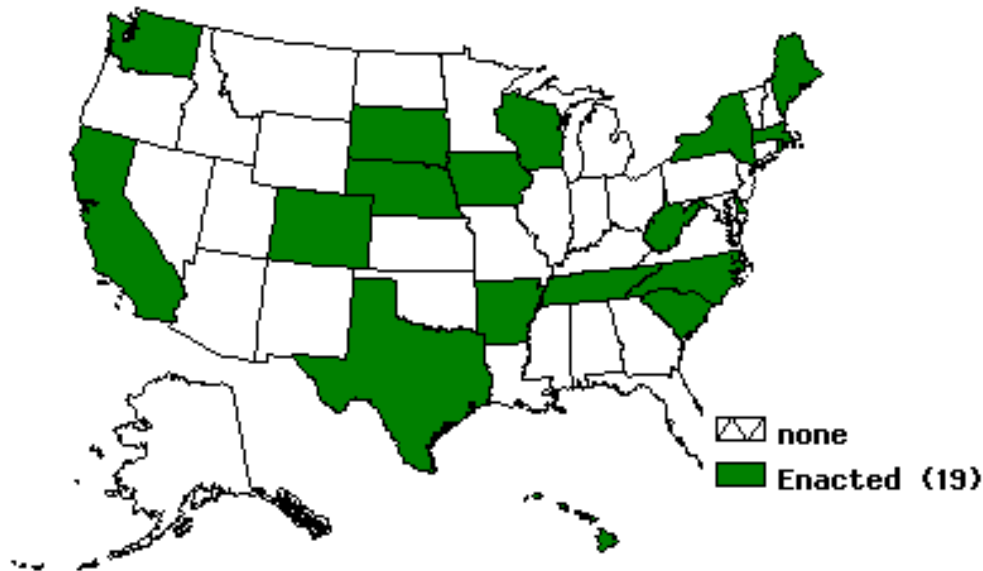
- Estimated cost of licensing 1,000 loan originators in all states
 - ◆ State mortgage lender
 - Divide originators into 10 teams, 5 states per team
 - \$2,425 per loan originator
 - \$2,425,000 total
 - ◆ National bank
 - \$75 per loan originator
 - \$75,000 total

- *Note: state mortgage lender totals do not include work loss/time costs of compliance*

Source: 2009 American Financial Services Association/Hudson Cook LLP

The State of the States

- Most forward mortgage laws apply to reverse (ex., licensing, disclosures, practice restrictions, etc.)
- Also, states are increasing adopting laws that apply specifically to reverse mortgage loans





Common Themes of State Reverse Mortgage Laws

- ◆ Prepayment penalty restrictions
- ◆ Interest rate restrictions
- ◆ Cross-selling restrictions (anti-tying reverse-style)
- ◆ Disclosure requirements
- ◆ Due and payable trigger events
- ◆ Counseling requirements
- ◆ Servicing licensure requirements
- ◆ Treatment of proceeds with respect to taxes or eligibility for government programs
- ◆ Treble damages to borrowers for lender default
- ◆ HECMs-only laws (limits to proprietary products)
- ◆ Loan suitability

Reverse Mortgage Elder Protection Act of 2009 (effective Jan. 1, 2010)

- Prohibits prepayment penalties
- Regulates interest rates
- Imposes late charge payable from lender to borrower of three times the amount wrongfully withheld (plus interest), unless lender cures actual default
- Restricts “due and payable” triggers
- Prohibits lender or other person participating in origination from requiring annuity purchase
- Imposes counseling requirements
- Requires new disclosures



New State Reverse Mortgage Laws – California (Cont'd)

Amendments to Foreign Language Translation Requirements (effective later of July 1, 2010 or 90 days after form issued)

- “Supervised financial institution” that negotiates in Spanish, Tagalog, Vietnamese, or Korean in the course of negotiating residential real property agreement must deliver, prior to execution and within 3 days of receiving written application, specified form in the applicable foreign language specifying loan terms
- Updated form required if any terms summarized materially change before agreement consummated
- Compliance with the above constitutes compliance with existing translation requirements

Mortgage servicer licensing law (effective July 1, 2010)

- Requires licensure for servicers of “residential mortgage loans,” unless an exemption applies,
 - ◆ “Residential mortgage loan” includes reverse mortgages
- Note that other states (Kentucky, Massachusetts, New York and North Carolina) also define making HECM advances as “servicing”



New State Reverse Mortgage Laws – New Hampshire

SAFE Act-related law (effective July 31, 2009)

➤ Prohibits:

- ◆ YSPs in reverse mortgage transactions
- ◆ Reverse mortgage brokers or funders and their affiliates from participation or association with “any other financial or insurance activity”
 - Does not address firewalls
- ◆ Directly or indirectly requiring the purchase of “any other financial product or insurance product” as a condition of obtaining a reverse mortgage

SAFE Act-related licensing law (effective July 31, 2009)

- Provision requiring lender to assess borrower's ability to repay does not apply to a reverse mortgage that provides a “reasonable, tangible net benefit” to borrower

**Reverse Mortgage Fairness Act of 2009
(effective Oct. 26, 2009)**

- Reverse mortgage proceeds not considered “income” for purposes of annual income when senior citizens apply for partial property tax exemptions
- Funds used to repay a reverse mortgage are not deductible from annual income
- Interest or dividends realized from the investment of reverse mortgage proceeds are considered income



New State Reverse Mortgage Laws - Vermont

New reverse mortgage act (effective July 1, 2009)

- Prohibits issuing reverse mortgages, unless:
 - ◆ HUD-approved lender;
 - ◆ Loan complies with HECM or other similar federal reverse mortgage requirements; and
 - ◆ Loan insured by FHA or other similar federal agency, or is a GSE reverse mortgage
- Prohibits financial institution from conditioning reverse mortgage on purchase of an annuity
- Requires referral of reverse mortgage applicants to HUD-approved, face-to-face counseling prior to accepting application
- Attempt to apply reverse restrictions to federal banks

Washington State Reverse Mortgage Act (effective July 26, 2009)

- Divides the reverse mortgage world into 2 categories:
 - ◆ HECMs/other HUD products
 - ◆ “Proprietary reverse mortgage loan” - requires DFI preapproval
- Provisions applicable to both categories of reverse mortgages
 - ◆ “Due and Payable” restrictions
 - ◆ Restrictions on requiring annuity purchases and marketing annuities
 - ◆ Counseling certification
 - ◆ Rates may be fixed or ARM, or a combination, including compound interest
- Attempt to apply reverse restrictions to federal banks



New State Reverse Mortgage Laws - Washington (Cont'd)

- If lender defaults and fails to cure, borrower (or borrower's estate) is entitled to treble damages
 - ◆ Borrower may also seek other remedies
- Proprietary reverse mortgage proceeds and undisbursed funds not treated as income for purpose of determining eligibility and benefits under means-tested programs
- Financial requirements for licensee offering proprietary loans:
 - ◆ Letters of credit for greater of amount necessary to fund all reverse mortgage requirements over next year or \$3 million
 - ◆ \$10 million minimum capital (may rely on parent in certain circumstances)
 - ◆ Above requirements do not apply if licensee only originates proprietary reverse mortgages:
 - With proceeds fully disbursed at closing; or
 - That are sold into secondary market to investor with specified credit rating – must be written commitment from investor to purchase loans prior to closing and delivery must be made within 10 days of closing



New State Reverse Mortgage Laws - Washington (Cont'd)

- Proprietary reverse mortgage lender must:
 - ◆ Only make reverse mortgages to WA residents if at least 60 years of age
 - ◆ Refer prospective borrowers to at least 5 HUD-approved counselors within 3 business days of completed application
 - ◆ Allow prepayment without penalty, except under certain limited circumstances with prior written notice
 - ◆ Pay a specified late charge to borrower for any late advance (forfeit right to interest and monthly servicing fee)
 - ◆ Issue advances directly to borrower or his/her legal representative (except initial disbursement to closing agent)

- Proprietary reverse mortgage disclosures



Recently Vetoed Reverse Mortgage Legislation - Minnesota

Governor vetoed Senate File 489, Ch. 127 on May 21, 2009

- Reasons for veto
 - ◆ Suitability requirement poorly defined – “vague and will spawn litigation”
 - ◆ “[L]egislation could have the unintended consequence of causing mortgage bankers to refrain from offering reverse mortgage loans to consumers”
- Legislation included, among other things:
 - ◆ 10-day rescission period
 - ◆ Requirement that lender, prior to referring a prospective borrower for counseling, have reasonable grounds for believing reverse mortgage was suitable for borrower
 - Lender required to make reasonable inquiries to determine suitability
 - ◆ Prohibition on cross-selling (annuity, life insurance, long-term care insurance) for up to 18 months after reverse mortgage when it is known or should be known that purchase will be made using reverse mortgage proceeds



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