WEST VIRGINIA CODE CHAPTER 47 ARTICLE 24

WV Legislature

§47-24-1. Short title.

The article may be cited as the "Reverse Mortgage Enabling Act."

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§47-24-2. Statement of purpose.

It is the intent of this legislation that elderly homeowners be permitted to meet their financial needs by accessing the equity in their homes through a reverse mortgage.

The Legislature recognizes that many restrictions and requirements that exist to govern traditional mortgage transactions are inapplicable in the context of reverse mortgages.

In order to foster reverse mortgage transactions and better serve the elderly citizens of this state, the Legislature authorizes the making of reverse mortgages, and expressly relieves reverse mortgage lenders and borrowers from compliance with inappropriate requirements.

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§47-24-3. Definition.

"Reverse mortgage" means a nonrecourse loan secured by real property which:

(1) Provides cash advances to a borrower based on the equity in a borrower's owner-occupied principal residence;

(2) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(3) Is made by any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of this state or any other lender, other than an industrial loan company, affiliated with a federally-insured depository institution in this state, and licensed as a financial institution pursuant to chapter thirty-one-a of this code.

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§47-24-4. General rules for reverse mortgages.

Reverse mortgage loans shall be governed by the following rules, without regard to the requirements set out elsewhere for other types of mortgage transactions:

(a) Interest. A reverse mortgage may provide for an interest rate which is fixed or adjustable, and may also provide for interest that is contingent on appreciation in the value of the property, including appreciation or shared equity.

(b) Intervening liens. All advances made under a reverse mortgage and all interest on such advances shall have priority over any lien filed after the closing of a reverse mortgage.

(c) Lender default. Lenders failing to make loan advances as required in the loan documents, and failing to cure such default as required in the loan documents, shall forfeit any right to collect interest. Lenders may also be subject to the penalty provisions set forth in chapter thirty-one-a of this code.

(d) Mortgage recordation tax. The recordation tax on reverse mortgages shall not exceed the actual cost of recording the mortgage.

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

(f) Prepayment. Payment, in whole or in part, shall be permitted without penalty at any time during the period of the loan.

(g) Repayment.

(1) The mortgage may become due and payable upon the occurrence of any one of the following events:

(A) The title to the home securing the loan is sold or otherwise transferred;

(B) All borrowers cease occupying the home as a principal residence, subject to the additional conditions set forth in paragraph (A) and (B), subdivision (2), subsection (g) of this section;

(C) Any fixed maturity date agreed to by the lender and the borrower is reached; or

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

(2) The repayment requirement is also expressly subject to the following additional conditions:

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(A) Temporary absences from the home not exceeding sixty consecutive days shall not cause the mortgage to become due and payable;

(B) Temporary absences from the home exceeding sixty consecutive days but less than one year shall not cause the mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a manner satisfactory to the lender;

(C) The lender's right to collect reverse mortgage proceeds shall be subject to the applicable statute of limitations for loan contracts in section six, article two, chapter fifty-five. Notwithstanding section six, the statute of limitations shall commence on the date that the mortgage becomes due and payable;

(D) The lender must prominently disclose in the loan document any interest or other fees to be charged during the period that commences on the date that the mortgage becomes due and payable, and ends when repayment in full is made.

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§47-24-5. Inapplicability of related statutes and law.

Reverse mortgage loans may be made or acquired without regard to the following statutory provisions or relevant interpretation of law:

(a) Limitations on the purpose and use of future advances or any other mortgage proceeds;

(b) Limitations on future advances to a term of years, or limitations on the term of credit line advances;

(c) Limitations on the term during which future advances take priority over intervening advances;

(d) Requirements that a maximum mortgage amount be stated in the mortgage;

(e) Limitations on loan-to-value ratios;

(f) Prohibitions on balloon payments;

(g) Prohibitions on compounded interest and interest on interest;

(h) Interest rate limits under the usury statutes;

(i) Requirements that a percentage of the loan proceeds must be advanced prior to loan assignment; and

(j) Limitations on ongoing administrative and servicing fees.

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§47-24-6. Treatment of reverse mortgage loan proceeds by public benefit programs.

Notwithstanding any law relating to payments, allowances, benefits or service provided on a means-tested basis, including, but not limited to, supplemental security income, low-income energy assistance, property tax relief, medical assistance and general assistance:

(a) Reverse mortgage loan payments made to a borrower shall be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means tested programs of aid to individuals.

(b) Undisbursed funds shall be treated as equity in a borrower's home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

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§47-24-7. Consumer information and counseling.

(a) No reverse mortgage commitment shall be made by a lender unless the loan applicant attests, in writing that the applicant received from the lender at time of initial inquiry a statement prepared by the commissioner of banking, in consultation with the board of the West Virginia Housing Development Fund, regarding the advisability and availability of independent information and counseling services on reverse mortgages.

(b) The commissioner of banking, in conjunction with the West Virginia Housing Development Fund, shall be responsible for:

(1) Providing independent consumer information on reverse mortgages and alternatives; and

(2) Referring consumers to independent counseling services with expertise in reverse mortgages.

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§47-24-8. Regulatory authority and exemptions.

(a) All reverse mortgage loans subject to this article shall be under the jurisdiction and supervision of the commissioner of banking, and subject to the regulatory authority and penalties set forth in chapter thirty-one-a of this code.

(b) The commissioner of banking shall have the authority to promulgate rules in order to affect compliance with the provisions of this article.

(c) Persons making reverse mortgage loans through a program authorized by and under the supervision of a federal governmental agency or through a federally sponsored mortgage enterprise are exempt from the provisions of this article, and may make reverse mortgages notwithstanding any provisions to the contrary in this code: Provided, That such loans are sold to those agencies or enterprises within forty-five days of loan closing and that the commissioner of banking certifies that the program provides consumers with protections against abusive practices. Loans under this subsection may, like other reverse mortgage loans, also be made or acquired without regard to relevant interpretations of law to the same extent as provided in section five of this article.

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