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SENATE AND HOUSE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

— • —

# ENROLLED

HOUSE BILL No. 4855

(By Delegates Walters, Douglas, Hall,  
Kominar, Cann, Azinger and Tellis)

— • —

Passed March 8 1996

In Effect Ninety Days From Passage

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LEGISLATIVE DEPARTMENT  
STATE OF WEST VIRGINIA

## ENROLLED

# H. B. 4855

(BY DELEGATES WALTERS, DOUGLAS, HALL, KOMINAR,  
CANN, AZINGER AND TILLIS)

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[Passed March 8, 1996; in effect ninety days from passage.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-four, relating to establishing reverse mortgages; and promulgating rules for reverse mortgages.

*Be it enacted by the Legislature of West Virginia:*

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-four, to read as follows:

### ARTICLE 24. THE REVERSE MORTGAGE ENABLING ACT.

#### §47-24-1. Short title.

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

#### §47-24-2. Statement of purpose.

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

4       The Legislature recognizes that many restrictions and  
5       requirements that exist to govern traditional mortgage

6 transactions are inapplicable in the context of reverse  
7 mortgages.

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

**§47-24-3. Definition.**

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

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

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

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

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

1 Reverse mortgage loans shall be governed by the fol-  
2 lowing rules, without regard to the requirements set out  
3 elsewhere for other types of mortgage transactions:

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

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

12 (c) Lender default. Lenders failing to make loan  
13 advances as required in the loan documents, and failing to

14 cure such default as required in the loan documents, shall  
15 forfeit any right to collect interest. Lenders may also be  
16 subject to the penalty provisions set forth in chapter  
17 thirty-one-a of this code.

18 (d) Mortgage recordation tax. The recordation tax on  
19 reverse mortgages shall not exceed the actual cost of re-  
20 cording the mortgage.

21 (e) Periodic advances. If a reverse mortgage provides  
22 for periodic advances to a borrower, such advances shall  
23 not be reduced in amount or number based on any adjust-  
24 ment in the interest rate.

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

28 (g) Repayment.

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

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

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

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

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

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

43 (A) Temporary absences from the home not exceed-  
44 ing sixty consecutive days shall not cause the mortgage to  
45 become due and payable;

46 (B) Temporary absences from the home exceeding  
47 sixty consecutive days but less than one year shall not

48 cause the mortgage to become due and payable so long as  
49 the borrower has taken prior action which secures the  
50 home in a manner satisfactory to the lender;

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

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

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

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

4 (a) Limitations on the purpose and use of future ad-  
5 vances or any other mortgage proceeds;

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

8 (c) Limitations on the term during which future ad-  
9 vances take priority over intervening advances;

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

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

13 (f) Prohibitions on balloon payments;

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

16 (h) Interest rate limits under the usury statutes;

17 (i) Requirements that a percentage of the loan pro-  
18 ceeds must be advanced prior to loan assignment; and

19 (j) Limitations on ongoing administrative and servic-

20 ing fees.

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

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

6 (a) Reverse mortgage loan payments made to a bor-  
7 rower shall be treated as proceeds from a loan and not as  
8 income for the purpose of determining eligibility and  
9 benefits under means tested programs of aid to individu-  
10 als.

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

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

1 (a) No reverse mortgage commitment shall be made  
2 by a lender unless the loan applicant attests, in writing that  
3 the applicant received from the lender at time of initial  
4 inquiry a statement prepared by the commissioner of  
5 banking, in consultation with the board of the West Vir-  
6 ginia Housing Development Fund, regarding the advisabil-  
7 ity and availability of independent information and coun-  
8 seling services on reverse mortgages.

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

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

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

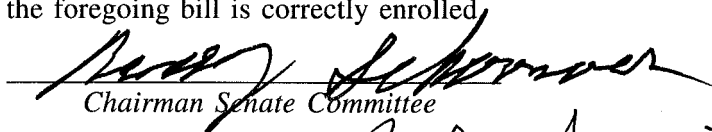
**§47-24-8. Regulatory authority and exemptions.**

1       (a) All reverse mortgage loans subject to this article  
2 shall be under the jurisdiction and supervision of the com-  
3 missioner of banking and subject to the regulatory author-  
4 ity and penalties set forth in chapter thirty-one-a of this  
5 code.

6       (b) The commissioner of banking shall have the au-  
7 thority to promulgate rules in order to affect compliance  
8 with the provisions of this article.

9       (c) Persons making reverse mortgage loans through a  
10 program authorized by and under the supervision of a  
11 federal governmental agency or through a federally spon-  
12 sored mortgage enterprise are exempt from the provisions  
13 of this article, and may make reverse mortgages notwith-  
14 standing any provisions to the contrary in this code: *Pro-*  
15 *vided*, That such loans are sold to those agencies or enter-  
16 prises within forty-five days of loan closing and that the  
17 commissioner of banking certifies that the program pro-  
18 vides consumers with protections against abusive practices.

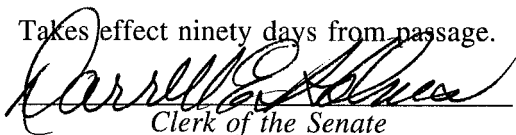
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

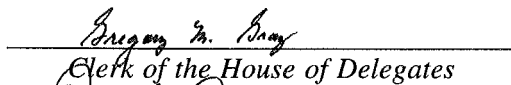
  
Chairman Senate Committee

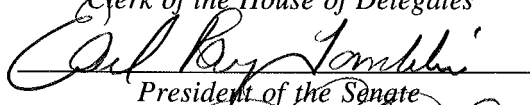
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

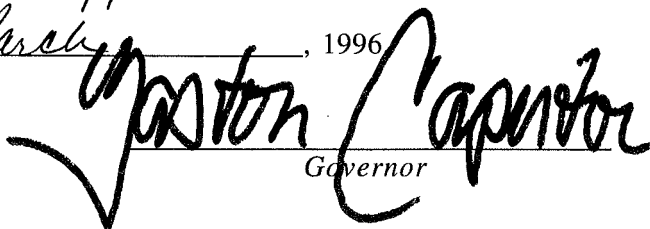
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 28th  
day of March, 1996

  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/27/96

Time 3:02pm