

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1008

5 By: Representative J. Hutchinson
6
7

For An Act To Be Entitled

9 AN ACT TO REGULATE REVERSE MORTGAGE TRANSACTIONS;
10 AND FOR OTHER PURPOSES.
11

Subtitle

12 AN ACT TO REGULATE REVERSE MORTGAGE
13 TRANSACTIONS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 23 is amended to add an additional
21 chapter to read as follows:

22 23-54-101. Title.

23 This chapter shall be known and may be cited as the "Reverse Mortgage
24 Protection Act".
25

26 23-54-102. Applicability.

27 This chapter applies to reverse mortgage loans executed on or after
28 July 1, 2005.
29

30 23-54-103. Definitions.

31 As used in this chapter "reverse mortgage" means a nonrecourse loan
32 secured by a borrower's principal residence that:

33 (1) Provides cash advances to a borrower based upon the amount
34 of equity in the borrower's residence; and

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



1
2 23-54-104. Provisions of reverse mortgages.

3 (a) A reverse mortgage loan:

4 (1)(A) Shall permit prepayment in whole or in part without
5 penalty at any time during the term of the reverse mortgage loan.

6 (B) For the purposes of this subdivision (a)(1), "penalty"
7 does not include any fees, payments, or other charges that would have
8 otherwise been due upon the maturity of the reverse mortgage;

9 (2) May provide for a fixed or adjustable interest rate or
10 combination thereof, and compound interest;

11 (3) May provide for a rate of interest that is contingent upon
12 the value of the property at the time of execution of the loan or at
13 maturity, or upon changes in value between closing and maturity; and

14 (4) May include costs and fees that are customarily charged by
15 the lender or the lender's designee, originator, or servicer, including costs
16 and fees charged:

17 (1) Upon execution of the loan;

18 (2) On a periodic basis; or

19 (3) Upon maturity.

20 (b) If a reverse mortgage loan provides for periodic advances to a
21 borrower, the advances shall not be reduced in amount or number based upon
22 any adjustment in the interest rate.

23 (c) The lender shall prominently disclose in the loan agreement any
24 interest rate or other fees to be charged during the period that commences on
25 the date that the reverse mortgage loan becomes due and payable and that ends
26 when repayment in full is made.

27 (d) The first page of any mortgage or deed of trust securing a reverse
28 mortgage loan shall contain the following statement in 10-point boldface
29 type: "This deed of trust secures a reverse mortgage loan."

30
31 23-54-105. Treatment of loan proceeds.

32 To the extent that implementation of this section does not conflict
33 with federal law:

34 (1) Reverse mortgage loan payments made to a borrower shall be
35 treated as proceeds from a loan and not as income for the purpose of
36 determining eligibility and benefits under programs of aid to individuals;

1 and

2 (2) Undisbursed reverse mortgage funds shall be treated as
3 equity in the borrower’s home and not as proceeds from a loan, resources, or
4 assets for the purpose of determining eligibility and benefits under programs
5 of aid to individuals.

6
7 23-54-106. Loan application – Disclosures.

8 (a) No reverse mortgage loan application shall be taken by a lender
9 unless the loan applicant has received from the lender the following plain
10 language statement, in conspicuous 16-point type or larger, advising the
11 prospective borrower about counseling prior to obtaining the reverse mortgage
12 loan:

13 “IMPORTANT NOTICE TO REVERSE MORTGAGE LOAN APPLICANT

14
15 THE REVERSE MORTGAGE WHICH YOU ARE CONSIDERING:

16 / /DOES

17 / /DOES NOT

18
19 REQUIRE THAT YOU PURCHASE AN ANNUITY IN CONNECTION WITH THE REVERSE MORTGAGE
20 TRANSACTION.

21
22 A REVERSE MORTGAGE IS A COMPLEX FINANCIAL TRANSACTION THAT PROVIDES A MEANS
23 OF USING THE EQUITY YOU HAVE BUILT UP IN YOUR HOME OR THE VALUE OF YOUR HOME
24 AS A SOURCE OF ADDITIONAL INCOME. IF YOU DECIDE TO OBTAIN A REVERSE MORTGAGE
25 LOAN, YOU WILL SIGN BINDING LEGAL DOCUMENTS THAT WILL HAVE IMPORTANT LEGAL
26 AND FINANCIAL IMPLICATIONS FOR YOU AND YOUR ESTATE. IT IS THEREFORE
27 IMPORTANT TO UNDERSTAND THE TERMS OF THE REVERSE MORTGAGE AND ITS EFFECT.

28
29 AS IS TRUE BEFORE ENTERING INTO ANY COMPLEX FINANCIAL ARRANGEMENT, IT IS WISE
30 TO SEEK THE COUNSELING AND ADVICE OF APPROPRIATE PROFESSIONALS SUCH AS
31 ATTORNEYS, FINANCIAL ADVISERS, AND ACCOUNTANTS. COUNSELORS TRAINED ON
32 REVERSE MORTGAGES MAY ALSO BE AVAILABLE. YOU MAY ALSO WANT TO DISCUSS YOUR
33 DECISION WITH FAMILY MEMBERS OR OTHERS ON WHOM YOU RELY UPON FOR FINANCIAL
34 ADVICE.”

35 (b) Before giving the prospective borrower the statement described in
36 subsection (a) of this section, the lender shall mark the appropriate

1 alternative concerning annuity requirements.

2 (c) The lender shall be presumed to have satisfied any disclosure duty
 3 imposed by this chapter if the lender provides a disclosure statement in the
 4 same form as provided in this chapter.

5
 6 23-54-107. Lien.

7 (a) A reverse mortgage shall constitute a lien against the subject
 8 property to the extent of all advances made under the reverse mortgage and
 9 all interest accrued on the advances.

10 (b) The lien shall have priority over any lien filed after recordation
 11 of the reverse mortgage.

12
 13 23-54-108. Default.

14 (a) The reverse mortgage loan may become due and payable upon the
 15 occurrence of any one (1) of the following events:

16 (1) The home securing the loan is sold or title to the home is
 17 otherwise transferred;

18 (2) All borrowers cease occupying the home as a principal
 19 residence, except as provided in subsection (b) of this section;

20 (3) Any fixed maturity date agreed to by the lender and the
 21 borrower occurs; or

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

24 (b)(1) Temporary absences from the home not exceeding sixty (60)
 25 consecutive days shall not cause the mortgage to become due and payable.

26 (2) Extended absences from the home exceeding sixty (60)
 27 consecutive days, but less than one (1) year, shall not cause the mortgage to
 28 become due and payable if the borrower has taken prior action which secures
 29 and protects the home in a manner satisfactory to the lender.

30 (c)(1) The lender's right to collect reverse mortgage loan proceeds
 31 shall be subject to the applicable statute of limitations for written loan
 32 contracts.

33 (2) Notwithstanding any other provision of law, the statute of
 34 limitations shall commence on the date that the reverse mortgage loan becomes
 35 due and payable as provided in the loan agreement.

36

1 23-54-109. Remedies.

2 (a) A lender who fails to make loan advances as required in the loan
3 documents shall pay the borrower treble the amount wrongfully withheld plus
4 interest at the maximum legal rate.

5 (b) No arrangement, transfer, or lien subject to this chapter shall be
6 invalidated solely because of the failure of a lender to comply with any
7 provision of this chapter.

8 (c) Nothing in this section shall preclude the application of any
9 other civil remedy provided by law.

10
11 SECTION 2. Arkansas Code § 23-53-103(5), concerning the definition of
12 a "high-cost home loan" under the Arkansas Home Loan Protection Act, is
13 amended to read as follows:

14 (5)(A) "High-cost home loan" means a loan, including an open-end
15 credit plan, ~~but~~ other than a ~~reverse mortgage transaction~~, bridge or
16 construction loan, or a loan made for the purchase of a one (1) to four (4)
17 family residential structure that is secured by a first lien on the
18 structure, in which:

19 (i) The total loan amount does not exceed one
20 hundred fifty thousand dollars (\$150,000);

21 (ii) The borrower is a natural person;

22 (iii) The debt is incurred by the borrower primarily
23 for personal, family, or household purposes;

24 (iv) The loan is secured by a mortgage or deed of
25 trust on real estate upon which there is located a structure or structures
26 designed principally for the occupancy of from one (1) to four (4) families
27 which is or will be occupied by the borrower as the borrower's principal
28 dwelling; and

29 (v) The terms of the loan meet or exceed one (1) or
30 more of the thresholds as defined in subdivision (7) of this section.

31 (B) "High-cost home loan" does not include any loan which
32 within sixty (60) days after closing will be insured by, securitized for, or
33 sold to a government agency or government-sponsored enterprise, including the
34 Department of Housing and Urban Development, the federal Department of
35 Veterans Affairs, Federal Home Loan Mortgage Corporation, Federal National
36 Mortgage Association, Arkansas Development Finance Authority, and the United

1 States Department of Agriculture, or that the lender can demonstrate was in
2 good faith intended to be so insured by, securitized for, or sold to the
3 government agency or government-sponsored enterprise;

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5 SECTION 3. Arkansas Code § 23-53-103, concerning definitions under the
6 Arkansas Home Loan Protection Act, is amended to add an additional subsection
7 to read as follows:

8 (9) "Reverse mortgage transaction" means a nonrecourse loan secured by
9 a borrower's principal residence that:

10 (A) Provides cash advances to a borrower based upon the amount
11 of equity in the borrower's residence; and

12 (B) Requires no payment of principal or interest until the
13 entire loan becomes due and payable.

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15 SECTION 4. Arkansas Code § 23-53-104, concerning prohibited acts and
16 practices regarding high-cost home loans, is amended to add an additional
17 subsection to read as follows:

18 (p) Subsections (f), (g), and (i) of this section do not apply to
19 reverse mortgage transactions.

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