

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.

Act 2166 of the Regular Session

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

As Engrossed: H1/24/05

A Bill

HOUSE BILL 1008

5 By: Representative J. Hutchinson
6
7

8 **For An Act To Be Entitled**

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

12 **Subtitle**

13 AN ACT TO REGULATE REVERSE MORTGAGE
14 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 January 1, 2006.
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



1 entire loan becomes due and payable.

2
3 23-54-104. Provisions of reverse mortgages.

4 (a) A reverse mortgage loan:

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

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

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

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

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

18 (1) Upon execution of the loan;

19 (2) On a periodic basis; or

20 (3) Upon maturity.

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

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

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

31
32 23-54-105. Treatment of loan proceeds.

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

35 (1) Reverse mortgage loan payments made to a borrower shall be
36 treated as proceeds from a loan and not as income for the purpose of

1 determining eligibility and benefits under programs of aid to individuals;
2 and

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

7
8 23-54-106. Loan application – Disclosures.

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

14 “IMPORTANT NOTICE TO REVERSE MORTGAGE LOAN APPLICANT

15
16 THE REVERSE MORTGAGE WHICH YOU ARE CONSIDERING:

17 / /DOES

18 / /DOES NOT

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

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

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

36 (b) Before giving the prospective borrower the statement described in

1 subsection (a) of this section, the lender shall mark the appropriate
2 alternative concerning annuity requirements.

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

6
7 23-54-107. Lien.

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

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

13
14 23-54-108. Default.

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

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

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

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

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

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

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

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

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

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23-54-109. Remedies.

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

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

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

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

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

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

(ii) The borrower is a natural person;

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

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

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

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

1 Mortgage Association, Arkansas Development Finance Authority, and the United
2 States Department of Agriculture, or that the lender can demonstrate was in
3 good faith intended to be so insured by, securitized for, or sold to the
4 government agency or government-sponsored enterprise;

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

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

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

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

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

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

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22 */s/ J. Hutchinson*

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25 *APPROVED: 4/13/2005*

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