

LC01186

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

A N A C T

RELATING TO PROPERTY

Introduced By: Senator Daniel DaPonte

Date Introduced: March 20, 2003

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "Property" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 48

4 THE RHODE ISLAND HOME LOAN PROTECTION ACT

5 **34-48-1. Title purposes.** – This chapter shall be known as the "Rhode Island Home Loan
6 Protection Act."

7 **34-48-2. Definitions.** – (a) As used in this chapter, the following words shall have the
8 following meanings:

9 (1) "APR" means the annual percentage rate for the loan calculated according to the
10 provisions of the federal Truth-in-Lending Act, 15 U.S.C Section 1601 et seq. and the regulations
11 promulgated.

12 (2) "Covered loan" means a consumer credit mortgage loan transaction, involving real
13 property located within this state, that is considered a "mortgage" under Section 152 of the Home
14 Ownership and Equity Protection Act of 1994 (15 U.S.C. Section 1602 (aa)), and the regulations
15 adopted pursuant thereto by the federal reserve board, including Section 226.32 of Title 12 of the
16 Code of Federal Regulations, and the official staff commentary to the regulations as each may be
17 amended from time to time.

18 (3) "Lender" means any individual or entity that in any twelve (12) month period
19 originates one (1) or more than one (1) covered loan. The individual or entity to whom the

1 covered loan is initially payable, either on the face of the note or contract, shall be deemed to be
2 the lender.

3 (4) “Mortgage broker” means a person (not an employee or exclusive agent of a lender)
4 who for compensation brings an obligor and lender together to obtain a covered loan.

5 (5) “Municipality” means a county, city, incorporated town or township.

6 (6) “Political subdivision” means a municipality, including a home rule or charter
7 municipality, school district, vocational school district, other district authority local board, local
8 agency, political subdivision, public corporation or local government entity.

9 (7) “Servicer” has the same meaning provided in Section 2605(i)(2) of the Real Estate
10 Settlement Procedures Act of 1974, 12 U.S.C. 2601 et seq., as amended from time to time.

11 (8) “Prepaid finance charge” means any charge imposed as an incident to or a condition
12 of the loan or extension of credit payable by the borrower at or before the closing of the
13 transaction, including, but not limited to, loan fees, points, commissions, broker’s fees or
14 commissions, transaction fees or similar finance charges or any fees or commissions payable to
15 the lender or broker in connection with the sale of credit life, accident, health, disability or
16 unemployment insurance products or unrelated goods or services sold in conjunction with the
17 loan or extension of credit when the cost of such insurance products or goods or services is
18 prepaid with the proceeds of the loan or extension of credit and financed as part of the principal
19 amount of the loan or extension of credit.

20 (9) “Prepayment penalty” means any charge or penalty for paying all or part of the
21 principal before the date on which the principal is due.

22 **34-48-3. Disclosure.** – A lender making a covered home loan shall disclose to the
23 prospective borrower:

24 (a) The following statement: “You are not required to complete this agreement merely
25 because you have received these disclosures or have signed a loan application. If you obtain this
26 loan, the lender will have a mortgage on your home. You could lose your home, and any money
27 you have put into it, if you do not meet your obligations under the loan”;

28 (b) The APR;

29 (c) The amount of the regular monthly or other periodic payment; and

30 (d) For variable-rate transactions, a statement that the interest rate and monthly payment
31 may increase, and the amount of the single maximum monthly payment, based on the maximum
32 interest rate that may be imposed during the term of the loan.

33 **34-48-4. Restrictions.** – A covered loan shall not provide for or include the following:

34 (a) For a loan with a term of less than seven (7) years, a payment schedule with regular

1 periodic payments that when aggregated do not fully amortize the outstanding principal balance,
2 except that this limitation does not apply to a loan with maturities of less than one (1) year if the
3 purpose of the loan is a bridge loan connected with the acquisition or construction of a dwelling
4 intended to become the borrower's principal dwelling;

5 (b) A payment schedule that consolidates more than two (2) periodic payments and pays
6 them in advance from the proceeds;

7 (c) An increase in the interest rate after default or default charges in excess of five
8 percent (5%) of the amount in default;

9 (d) A refund calculated by a method less favorable than the actuarial method, as defined
10 by Section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C 1615(d),
11 for rebates of interest arising from a loan acceleration due to default;

12 (e) A prepayment penalty except as allowed by this subdivision. A covered loan may
13 provide for or include a prepayment penalty, if:

14 (1) The penalty can be exercised only for the first three (3) years following
15 consummation. No prepayment penalty shall exceed three percent (3%) of the balance prepaid for
16 any payment occurring earlier than one (1) year after consummation of the loan, two percent (2%)
17 of the balance prepaid for any payment occurring between one (1) and two (2) years after
18 consummation of the loan, and one percent (1%) of the balance prepaid for any payment
19 occurring between two (2) and three (3) years after consummation of the loan;

20 (2) The source of the prepayment funds is not a refinancing by the lender or an affiliate of
21 the lender; and

22 (3) At consummation, the borrower's total monthly debts, including amounts owed under
23 the covered loan, do not exceed fifty-five percent (55%) of the borrower's monthly gross income,
24 as verified by the borrower's signed financial statement such as Fannie Mae form 1003, a credit
25 report and payment records for employment income; and

26 (f) A call provision that permits the lender, in its sole discretion, to accelerate the
27 indebtedness. This prohibition shall not apply when repayment of the loan is accelerated by bona
28 fide default, pursuant to a due-on-sale clause provision, or pursuant to another provision of the
29 loan agreement unrelated to the payment schedule including, but not limited to, bankruptcy or
30 receivership.

31 **34-48-5. Reporting.** – Any lender who makes a covered loan shall report both the
32 unfavorable payment history of the borrower to a nationally recognized consumer credit reporting
33 agency at least annually during such period as the lender holds or services the loan.

34 **34-48-6. Prohibited acts and practices.** – In the making of a covered loan no lender

1 shall:

2 (a) Pay a contractor under a home improvement contract from the proceeds of the loan,
3 other than:

4 (1) By an instrument payable to the borrower or jointly to the borrower and the
5 contractor; or

6 (2) At the election of the borrower, through a third-party escrow agent in accordance with
7 terms established in a written agreement signed by the borrower, the lender and the contractor
8 prior to the disbursement;

9 (b) Charge any points in connection with a covered loan if the proceeds of the covered
10 loan are used to refinance an existing covered loan owned by the lender and the last financing
11 was within one (1) year of the current refinancing; provided, however, this provision shall not
12 prohibit a lender from charging points in connection with any additional proceeds received by the
13 obligor or paid to third parties on the obligor's behalf in connection with the refinancing. For
14 purposes of this subsection, "additional proceeds" for a closed end loan is the amount over and
15 above the outstanding principal balance of the existing covered loan; provided, however, in the
16 event the lender refunds all the points on the covered loan being refinanced, the "additional
17 proceeds" shall be the principal balance of the new covered loan;

18 (c) Charge a borrower any fees to modify, renew, extend or amend a covered loan or
19 defer any payment due under a covered loan, if after the modification, renewal, extension or
20 amendment the loan is still a covered loan, or if no longer a covered loan, the APR has not been
21 reduced by at least two (2) percentage points. For purposes of this subdivision, "fees" does not
22 include interest that is otherwise payable and consistent with the provisions of the loan
23 documents. The provisions of this subdivision do not prohibit a lender from charging, imposing
24 or causing to be paid, directly or indirectly, prepaid finance charges in connection with any
25 additional proceeds, as defined in subdivision (c) of this section, received by the borrower in
26 connection with the modification, renewal, extension or amendment, provided the prepaid finance
27 charges on additional proceeds do not exceed five percent (5%) of the additional proceeds. The
28 provisions of this subdivision do not apply if the existing covered loan is sixty (60) or more days
29 delinquent and the modification, renewal, extension, amendment or deferral is part of a work-out
30 process;

31 (d) Engage in a pattern or practice of extending credit to a consumer based on the
32 consumer's collateral without regard to the consumer's repayment ability, including the
33 consumer's current and expected income, current obligations and employment. There is a

1 presumption that a creditor has violated this paragraph if the creditor engages in a pattern or
2 practice of making loans without verifying and documenting consumers' repayment ability;

3 (e) Advertise that refinancing preexisting debt with a covered loan will reduce a
4 borrower's aggregate monthly debt payment without also disclosing that the covered loan may
5 increase both the borrower's aggregate number of monthly debt payments and the aggregate
6 amount paid by the borrower over the term of the covered loan; and

7 (f) Recommend or encourage default or further default by a borrower on an existing loan
8 or other debt, prior to the closing of a covered loan that refinances all or any portion of such
9 existing loan or debt.

10 **34-48-7. Additional products.** -- (a) Commencing January 1, 2004, any lender that
11 makes a covered loan to a borrower and offers such borrower the option to purchase an individual
12 or group credit life, accident, health, disability or unemployment insurance product on a prepaid
13 single premium basis shall also offer such borrower the option of purchasing such insurance
14 product on a prepaid single premium basis shall also offer such borrower the option of purchasing
15 such insurance product on a monthly premium basis.

16 (b) If a borrower purchases from a lender an individual or group credit life, accident,
17 health, disability or unemployment insurance product, such borrower shall have the right to
18 cancel such insurance product at any time and receive a refund of any unearned premiums paid.
19 Notice of the right to cancel shall be sent by mail to such borrower by the lender no later than
20 thirty (30) days after consummation. Such notice shall also disclose the type of insurance product
21 purchased, the cost of such product and the procedure for canceling such product.

22 **34-48-8. Refunds** -- The lender and any assignee of the lender, shall have the
23 obligation, jointly and severally, to refund or credit the borrower for any default charges,
24 prepayment penalties or prepaid finance charges collected in excess of the limits set forth in this
25 act.

26 **34-48-9. Chapter controlling.** -- (a) All political subdivisions of this state, are
27 prohibited from enacting, issuing and enforcing ordinances, resolutions, regulations, orders,
28 requests for proposals, or requests for bids pertaining to the financial or lending activities of
29 persons who:

30 (1) are subject to the jurisdiction of the department of business regulation, including
31 activities subject to this act;

32 (2) are subject to the jurisdiction or regulatory supervision of the Board of Governors of
33 the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift
34 Supervision, the National Credit Union Administration, the Federal Deposit Insurance

1 Corporation, the Federal Trade Commission or the United States Department of Housing and
2 Urban Development; or

3 (3) are subject to the jurisdiction or regulatory supervision of a department or agency of
4 another state; or

5 (4) originate, purchase, sell, assign, securitize or service property interests or obligations
6 created by financial transactions or loans made, executed or originated by persons referred to in
7 paragraph (1), (2), or (3) or assist or facilitate such transactions.

8 (b) The requirements of subsection (a) shall apply to all ordinances, resolutions, rules,
9 regulations, orders, requests for proposals, and requests for bids pertaining to financial or lending
10 activities, including any ordinances, resolutions, rules, regulations, orders, requests for proposals,
11 and requests for bids disqualifying persons from doing business with a political subdivision based
12 upon financial or lending activities or imposing reporting requirements or any other obligations
13 upon persons regarding financial or lending activities.

14 (c) It is the policy of this state that the laws of this state relating to financial and lending
15 activities are to be applied on a uniform statewide basis. To effectuate this intent, subsection (a)
16 shall apply both prospectively and retroactively. All existing ordinances, resolutions, rules,
17 regulations, orders, requests for proposals and requests for bids covered by subsection (a) are
18 superseded and preempted to the extent that they are inconsistent with this section.

19 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY

- 1 This act would create the "Rhode Island Home Loan Protection Act."
- 2 This act would take effect upon passage.

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