

1 loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the
2 loan. The general assembly finds that as competition and self-regulation have not eliminated the
3 abusive terms from home-secured loans, the consumer protection provisions of this chapter are
4 necessary to encourage lending at reasonable rates with reasonable terms.

5 (c) This chapter shall be liberally construed to effectuate its purpose of protecting the
6 homes and the equity of individual borrowers. This chapter is to be construed as a consumer
7 protection statute for all purposes.

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

10 (1) "Benchmark Rate" is the interest rate which a borrower can reduce by paying bona
11 fide discount points; this rate shall not exceed the weekly average yield of United States Treasury
12 securities having a maturity of five (5) years, on the fifteenth (15th) day of the month immediately
13 preceding the month in which the loan is made, plus four (4) percentage points.

14 (2) "Bona Fide Discount Points" means the loan discount points which are:

15 (i) Knowingly paid by the borrower;

16 (ii) Paid for the express purpose of lowering the benchmark rate;

17 (iii) In fact reducing the interest rate or time-price differential applicable to the loan from
18 an interest rate which does not exceed the benchmark rate; and

19 (iv) Recouped within the first four (4) years of the scheduled loan payments.

20 For purposes of assessing compliance with subsection (2)(iv), loan discount points will
21 be considered to be recouped within the first four (4) years of the scheduled loan payments if the
22 reduction in the interest rate that is achieved by the payment of the loan discount points reduces
23 the interest charged on the scheduled payments such that the borrower's dollar amount of savings
24 in interest over the first four (4) years is equal to or exceeds the dollar amount of loan discount
25 points paid by the borrower.

26 (3) "Borrower" means any natural person obligated to repay a loan, including a
27 coborrower, cosigner, or guarantor.

28 (4) "Creditor" means a person who extends consumer credit that is subject to a finance
29 charge or is payable by written agreement in more than four (4) installments, and to whom the
30 obligation is payable at any time.

31 (5) "High-Cost Home Loan" means a home loan in which the terms of the loan meet or
32 exceed one (1) or more of the thresholds as defined in subsection (9) of this section.

33 (6) "Home Loan" means a loan, including an open-end credit plan, other than a reverse
34 mortgage transaction, where the loan is secured by:

1 (i) A mortgage or deed of trust on real estate in this state upon which there is located or
2 there is to be located a structure or structures designed principally for occupancy of from one to
3 four (1-4) families which is or will be occupied by a borrower as the borrower’s principal
4 dwelling, or

5 (ii) A security interest on a manufactured home which is or will be occupied by a
6 borrower as the borrower’s principal dwelling.

7 (7) “Points and Fees” means:

8 (i) All items listed in 15 U.S.C. section 1605(a) (1) through (4), as amended from time to
9 time except interest or the time-priced differential;

10 (ii) All charges listed in 15 U.S.C. section 1605(e), as amended from time to time;

11 (iii) All compensation paid directly or indirectly to a mortgage broker,
12 including a broker that originates a loan in its own name in a table-funded transaction;

13 (iv) The cost of all premiums financed by the creditor, directly or indirectly for any credit
14 life, credit disability, credit unemployment or credit property insurance, or any other life or health
15 insurance, or any payments financed by the creditor or directly or indirectly for any debt
16 cancellation or suspension agreement or contract, except insurance premiums calculated and paid
17 on a monthly basis shall not be considered financed by the creditor;

18 (v) The maximum prepayment fees and penalties that may be charged or collected under
19 the terms of the loan documents;

20 (vi) All prepayment fees or penalties that are charged the borrower if the loan refinances
21 a previous loan made by the same creditor or an affiliate of the creditor; and

22 (vii) For open-end loans, the points and fees are calculated by adding the total fees
23 charged at closing plus the maximum additional fees which can be charged pursuant to the loan
24 documents during the term of the loan.

25 (8) “Rate” means the interest rate charged on the home loan, based on an annual simple
26 interest yield.

27 (9) “Threshold” means any one of the following two (2) items, as defined:

28 (i) “Rate Threshold” means:

29 (A) For the first lien mortgage loan, the trigger rate equals or exceeds six (6) percentage
30 points over the weekly average yield on five (5) year United States Treasury securities;

31 (B) For a subordinate mortgage lien or a mortgage secured solely by a security interest in
32 a manufactured home, the trigger rate equals or exceeds eight (8) percentage points over the
33 weekly average yield on five (5) year United States Treasury securities;

34 (C) The trigger rate is calculated as follows:

1 (I) For fixed-rate loans in which the interest rate will not vary during the term of the loan,
2 the trigger rate is the rate as of the date of closing;

3 (II) For loans in which the interest varies according to an index, the trigger rate is the sum
4 of the index rate as of the date of loan closing plus the maximum margin permitted at any time
5 under the loan agreement;

6 (III) For all other loans in which the rate may vary at any time during the term of the
7 loan, the trigger rate is the maximum rate that may be charged during the term of the loan.

8 (ii) Total Points and Fees Threshold means the following, excluding up to two (2) bona
9 fide discount points:

10 (A) For loans in which the total loan amount is thirty thousand dollars (\$30,000) or more,
11 the total points and fees on the loan, paid by the borrower at or before closing, exceed three
12 percent (3%) of the total loan amount;

13 (B) For loans in which the total loan amount is less than thirty thousand dollars (\$30,000)
14 the total points and fees on the loan, paid by the borrower at or before closing, exceed the lesser
15 of nine hundred dollars (\$900) or six percent (6%) of the total loan amount.

16 (10) "Total Loan Amount" means the principal of the loan minus those points and fees as
17 defined in subsection (7) of this section that are included in the principal amount of the loan. For
18 open-end loans, the total loan amount shall be calculated using the total line of credit allowed
19 under the home loan.

20 **34-48-3. Prohibited acts and practices regarding home loans.** - - (a) No creditor
21 making a home loan shall finance, directly or indirectly, any credit life, credit disability, credit
22 unemployment or credit property insurance, or any other life or health insurance, or any payments
23 directly or indirectly for any debt cancellation or suspension agreement or contract, except that
24 insurance premiums or debt cancellation or suspension fees calculated and paid on a monthly
25 basis shall not be considered financed by the creditor.

26 (b) No creditor may engage in the unfair act or practice of "flipping" a home loan.
27 "Flipping" a loan is the making of a home loan to a borrower that refinances an existing home
28 loan when the new loan does not have reasonable, tangible net benefit to the borrower
29 considering all of the circumstances, including the terms of both the new and refinanced loans,
30 the cost of the new loan, and the borrower's circumstances. In addition, the following home loan
31 refinancings shall be presumed to be flippings:

32 (1) If the primary tangible benefit to the borrower is an interest rate lower than the
33 interest rate(s) on debts satisfied or refinanced in connection with the home loan, and it will take
34 more than four (4) years for the borrower to recoup the costs of the points and fees and other

1 closing costs through savings resulting from the lower interest rate; or

2 (2) If the new loan refinances an existing home loan that is a special mortgage originated,
3 subsidized, or guaranteed by or through a state, tribal or local government, or nonprofit
4 organization, which either bears a below-market interest rate at the time the loan was originated,
5 or has nonstandard payment terms beneficial to the borrower, such as payments that vary with
6 income, are limited to a percentage of income, or where no payments are required under specified
7 conditions, and where, as a result of the refinancing, the borrower will lose one (1) or more of the
8 benefits of the special mortgage.

9 (c) No creditor shall recommend or encourage default on an existing loan or other debt
10 prior to and in connection with the closing or planned closing of a home loan that refinances all or
11 any portion of such existing loan or debt.

12 (d) No creditor may charge a late payment fee except according to the following rules:

13 (1) The late payment fee may not be in excess of four percent (4%) of the amount of the
14 payment past due.

15 (2) The fee may only be assessed for a payment past due for fifteen (15) days or more.

16 (3) The fee may not be charged more than once with respect to a single late payment. If a
17 late payment charge is deducted from a payment made on the loan, and such deduction causes a
18 subsequent default on a subsequent payment, no late payment charge may be imposed for such
19 default. If a late payment charge has been once imposed with respect to a particular late payment,
20 no such charge shall be imposed with respect to any future payment which would have been
21 timely and sufficient, but for the previous default.

22 (4) No fee may be charged unless the creditor notifies the borrower within forty-five (45)
23 days following the date the payment was due that a late payment charge has been imposed for a
24 particular late payment. No late payment charge may be collected from any borrower if the
25 borrower informs the creditor that nonpayment of an installment is in dispute and presents proof
26 of payment within forty-five (45) days of receipt of the creditor's notice of the late charge.

27 (5) The creditor shall treat each and every payment as posted on the same date as it was
28 received by the creditor, servicer, creditor's agent, or at the address provided to the borrower by
29 the creditor, servicer, or the creditor's agent for making payments.

30 (e) No home loan may contain a provision that permits the creditor, in its sole discretion,
31 to accelerate the indebtedness. This provision does not prohibit acceleration of the loan in good
32 faith due to the borrower's failure to abide by the material terms of the loan.

33 (f) No creditor may charge a fee for informing or transmitting to any person the balance
34 due to pay off a home loan or to provide a release upon prepayment. Payoff balances shall be

1 provided within a reasonable time, but in any event no more than seven (7) business days after the
2 request.

3 **34-48-4. Limitations and prohibited practices for high-cost home loans. - -**

4 A high-cost home loan shall be subject to the following additional limitations and
5 prohibited practices:

6 (1) No creditor making a high-cost home loan shall directly or indirectly finance more
7 than three percent (3%) of the loan amount in points or fees.

8 (2) No prepayment fees or penalties shall be included in the loan documents for a high-
9 cost home loan or charged the borrower which exceed in the aggregate:

10 (i) in the first twelve (12) months after the loan closing more than two percent (2%) of
11 the loan amount prepaid; or

12 (ii) in the second twelve (12) months after the loan closing, more than one percent (1%)
13 of the amount prepaid. No prepayment penalty shall be contracted for after the second (2nd) year
14 following the loan closing.

15 (3) No high-cost home loan may contain a scheduled payment that is more than twice as
16 large as the average of earlier scheduled payments. This provision does not apply when the
17 payment schedule is adjusted to the seasonal or irregular income of the borrower.

18 (4) No high-cost home loan may include payment terms under which the outstanding
19 principal balance will increase at any time over the course of the loan because the regular periodic
20 payments do not cover the full amount of interest due.

21 (5) No high-cost home loan may contain a provision that increases the interest rate after
22 default. This provision does not apply to interest rate changes in a variable rate loan other wise
23 consistent with the provisions of the loan documents, provided the change in the interest rate is
24 not triggered by the event of default or the acceleration of the indebtedness.

25 (6) No high-cost home loan may include terms under which more than two (2) periodic
26 payments required under the loan are consolidated and paid in advance from the loan proceeds
27 provided to the borrower.

28 (7) No high-cost home loan may be subject to a mandatory arbitration clause that limits
29 in any way the right of the borrower to seek relief through the judicial process for any and all
30 claims and defenses the borrower may have against the creditor, broker, or other party involved in
31 the loan transaction.

32 (8) A creditor may not make a high-cost home loan without first receiving certification
33 from a counselor approved by the United States Department of Housing and Urban Development
34 (HUD), a state housing financing agency, or the regulatory agency which has jurisdiction over the

1 creditor, that the borrower has received counseling on the advisability of the loan transaction.

2 (9) A creditor may not make a high-cost home loan without due regard to repayment
3 ability. A creditor who follows the debt-to-income ratio listed in 38 C.F.R. section 36.4337(c)(1)
4 and as defined in 38 C.F.R. section 36.4337(d) and follows the residual income guidelines
5 established in 38 C.F.R. section 36.4337(e) and VA Form 26-6393 shall benefit from a rebuttable
6 resumption that the creditor made the loan with due regard to repayment ability.

7 (10) A creditor may not pay a contractor under a home-improvement contract from the
8 proceeds of a high-cost home loan, unless:

9 (i) The creditor is presented with a signed and dated completion certificate showing that
10 the home improvements have been completed; and

11 (ii) The instrument is payable to the borrower or jointly to the borrower and to contractor,
12 or, at the election of the borrower, through a third-party escrow agent in accordance with terms
13 established in a written agreement signed by the borrower, the creditor, and the contractor prior to
14 the disbursement.

15 (11) A creditor may not charge a borrower any fees or other charges to modify, renew,
16 extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-
17 cost home loan.

18 (12) Any creditor making a high-cost home loan that has the legal right to foreclose must
19 use the judicial foreclosure procedures of the state wherein the property securing the loan is
20 located. The borrower shall have the right to assert in such proceeding the nonexistence of a
21 default and any other claim or defense to acceleration and foreclosure, including any based on
22 any violations of this act, though no such claim or defense shall be deemed a compulsory
23 counterclaim.

24 **34-48-5. Right to cure.** - - (a) If a creditor asserts that grounds for acceleration exist and
25 requires the payment in full of all sums secured by the security instrument, the borrower, or
26 anyone authorized to act on the borrower's behalf, shall have the right at any time, up to the time
27 title is transferred by means of foreclosure, by judicial proceeding and sale or otherwise, to cure
28 the default, and reinstate the home loan by tendering the amount or performance as specified
29 herein. Cure of default as provided herein shall reinstate the borrower to the same position as if
30 the default had not occurred and shall nullify, as of the date of the cure, any acceleration of any
31 obligation under the security instrument or note arising from the default.

32 (b) Before any action filed to foreclose upon the home or other action is taken to seize or
33 transfer ownership of the home, a notice of the right to cure the default must be delivered to the
34 borrower informing the borrower of the following:

1 (1) The nature of default claimed on the home loan, and of the borrower's right to cure
2 the default by paying the sum of money required to cure the default, provided that a creditor or
3 servicer may not refuse to accept any partial payment made or tendered in response to said notice.
4 If the amount necessary to cure the default will change during the thirty (30) day period after the
5 effective date of the notice, due to the application of a daily interest rate or the addition of late
6 fees, as allowed by this chapter, the notice shall give sufficient information to enable the
7 borrower to calculate the amount at any point during the thirty (30) day period;

8 (2) The date by which the borrower shall cure the default to avoid acceleration and
9 initiation of foreclosure, or other action to seize the home, which date shall not be less than thirty
10 (30) days after the date the notice is effective, and the name and address and telephone number of
11 a person to whom the payment or tender shall be made;

12 (3) That if the borrower does not cure the default by the date specified, the creditor may
13 take steps to terminate the borrower's ownership in the property by requiring payment in full of
14 the home loan and commencing a foreclosure proceeding or other action to seize the home; and

15 (4) The name and address of the creditor and the telephone number of a representative of
16 the creditor whom the borrower may contact if the borrower disagrees with the creditor's
17 assertion that a default has occurred or the correctness of the creditor's calculation of the amount
18 required to cure the default.

19 (c) To cure a default under this subsection, a borrower shall not be required to pay any
20 charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in
21 this section, other than the fees specifically allowed by this section. The borrower shall not be
22 liable for any attorney fees relating to the borrower's default that are incurred by the lender prior
23 to or during the thirty (30) day period set forth in subsection (b) (2) of this section, nor for any
24 such fees in excess of one hundred dollars (\$100) that are incurred by the lender after the
25 expiration of the thirty (30) day period but prior to the time the lender files a foreclosure action or
26 takes other action to seize or transfer ownership of the home. After the lender files a foreclosure
27 action or takes other action to seize or transfer ownership of the home, the borrower shall only be
28 liable for attorney fees that are reasonable and actually incurred by the lender, based on a
29 reasonable hourly rate and a reasonable number of hours.

30 (d) If a default is cured prior to the initiation of any action to foreclose or to seize the
31 residence, the creditor shall not institute the foreclosure proceeding or other action for that
32 default. If a default is cured after the initiation of any action to foreclose, the creditor shall take
33 such steps as are necessary to terminate the foreclosure proceeding or other action. Any creditor

1 making a home loan who has the legal right to foreclose must use the judicial foreclosure
2 procedures of the state wherein the property securing the loan is located.

3 The borrower shall have the right to assert in a judicial foreclosure proceeding or other
4 action the nonexistence of a default and any other claim or defense to acceleration and
5 foreclosure, including any based on violations of this chapter, though no such claim or defense
6 shall be deemed a compulsory counterclaim.

7 **34-48-6. Preservation and enforcement of claims and defenses; no subterfuge. - -**

8 (a) Notwithstanding any other provision of law, where a home loan was made, arranged,
9 or assigned by a person selling either a manufactured home, or home improvements to the
10 dwelling of a borrower, the borrower may assert all affirmative claims and any defenses that the
11 borrower may have against the seller or home-improvement contractor against the lender, any
12 assignee, holder, or servicer, in any capacity.

13 (b) Notwithstanding any provision of any other law, the remedies provided herein apply
14 to the creditor, any director, officer, employee, or controlling stockholder of, or agent for, a
15 creditor who personally participated in the making or approving of a high-cost home loan, and
16 any other persons to whom this chapter applies and who violated the requirements of this chapter.
17 Any person who purchases or is otherwise assigned a high-cost home loan shall be subject to all
18 affirmative claims and any defenses with respect to the loan that the borrower could assert against
19 the original creditor or broker of the loan.

20 (c) Notwithstanding any provision of any other law, a borrower in default more than
21 sixty (60) days or in foreclosure may assert a violation of this chapter by way of offset:

22 (1) As an original action;

23 (2) As a defense or counterclaim to an action to collect amounts owed; or

24 (3) To obtain possession of the home secured by the home loan.

25 (d) It is a violation of this chapter, for any person, who in bad faith attempts to avoid the
26 application of this chapter by:

27 (1) Dividing any loan transaction into separate parts for this purpose; or

28 (2) Any other such subterfuge, with the intent of evading the provisions of this chapter.

29 **34-48-7. Enforcement. - - (a)(1) Any violation of this chapter is a deceptive and unfair**
30 **trade practice, and constitutes a violation of chapter 6-13.1 regarding deceptive trade practices;**

31 (2) Any person found by a preponderance of the evidence to have violated this chapter
32 shall be liable to the borrower for the following:

33 (i) Actual damages, including consequential and incidental damages; the borrower shall
34 not be required to demonstrate reliance in order to receive actual damages;

1 (ii) Statutory damages equal to the finance charges agreed to in the home loan agreement,
2 plus ten percent (10%) of the amount finance;

3 (iii) Punitive damages, when the violation was malicious or reckless; and

4 (iv) Costs and reasonable attorneys' fees.

5 (3) A borrower may be granted injunctive, declaratory, and such other equitable relief as
6 the court deems appropriate in an action to enforce compliance with this chapter.

7 (4) The intentional violation of this chapter, or regulation there under, renders the home
8 loan agreement void, and the creditor shall have no right to collect, receive, or retain any
9 principal, interest, or other charges whatsoever with respect to the loan, and the borrower may
10 recover any payments made under the agreement.

11 (5) The right of rescission granted under 15 U.S.C. 1601 et seq. as amended from time to
12 time, for violations of that law and all other remedies provided hereunder shall be available to a
13 borrower by way of recoupment against a party foreclosing on the home loan or collecting on the
14 loan, at any time during the term of the loan.

15 (6) The remedies provided in this section are not intended to be the exclusive remedies
16 available to a borrower, nor must the borrower exhaust any administrative remedies provided
17 under this chapter or any other applicable law before proceeding under this section.

18 (b) Each violation of this chapter or any regulations, order or ruling promulgated or made
19 pursuant to this chapter, shall constitute a misdemeanor and shall be punishable by a fine not
20 exceeding five hundred dollars (\$500) or imprisonment not exceeding one (1) year, or by both,
21 and each day a violation continues to exist shall constitute a separate offense.

22 (c) A creditor in a home loan who, when acting in good faith, fails to comply with the
23 provisions of this chapter, will not be deemed to have violated this section if the creditor
24 establishes that either:

25 (1) Within thirty (30) days of the loan closing, and prior to receiving any notice from the
26 borrower of the compliance failure, the creditor has made appropriate restitution to the borrower,
27 and appropriate adjustments are made to the loan; or

28 (2) Within sixty (60) days of the loan closing and prior to receiving any notice from the
29 borrower of the compliance failure, and the compliance failure was not intentional and resulted
30 from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to
31 avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is
32 made to the borrower, and appropriate adjustments are made to the loan.

33 Examples of bona fide errors include clerical, calculation, computer malfunction and
34 programming, and printing errors. An error of legal judgment with respect to a person's

1 obligations under this section is not a bona fide error.

2 (d) The remedies provided herein are cumulative.

3 **34-48-8. Rights in addition to other laws.** - - The rights conferred by this chapter are
4 independent of and in addition to any other rights under other laws.

5 **34-48-9. Severability.** - - The provisions of this chapter shall be severable, and if any
6 phrase, clause, sentence or provision is declared to be invalid or is preempted by federal law or
7 regulation, the validity of the remainder of this chapter shall not be affected thereby. If any
8 provision of this chapter is declared to be inapplicable to any specific category, type or kind of
9 loan or points and fees, the provisions of this chapter shall nonetheless continue to apply with
10 respect to all other loans and points and fees.

11 **34-48-10. Applicability.** - - The law of the state in which the property is located shall be
12 applied to all transactions governed by this chapter. This chapter shall apply to all loans made or
13 entered into after the effective date of this chapter.

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

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LC02806

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

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

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