

47-30-101. Short title.

This chapter shall be known and may be cited as the "Home Equity Conversion Mortgage Act."

HISTORY: Acts 1993, ch. 410, § 2.

47-30-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Authorized lender" or "lender" means:

(A) A bank, savings and loan association, savings bank, savings institution, or credit union chartered under the laws of the United States or of Tennessee;

(B) The Tennessee housing development agency (THDA); provided, that such agency has authority by THDA board resolution to issue mortgages under this chapter; or

(C) Any other person authorized to make home equity conversion loans by the commissioner of financial institutions;

(2) "Borrower" means a natural person who occupies and owns in fee simple individually, or with another borrower as tenants by the entireties or as joint tenants with right of survivorship, an interest in residential real property securing a reverse mortgage loan, and who borrows money under a reverse mortgage loan;

(3) "Commissioner" means the commissioner of financial institutions;

(4) "Counselor" means either:

(A) An individual who has completed a training curriculum on reverse mortgage counseling provided or approved by HUD and whose name is maintained on HUD's list of approved reverse mortgage counselors; or

(B) A person or entity qualified under Fannie Mae guidelines to serve as a counselor in consumer education;

(5) "Equity share" means any compensation, in addition to interest that has accrued on the outstanding balance, that the borrower has paid or agrees to pay to the lender at maturity of a reverse mortgage loan, which is equal to a percentage of the value of the property securing a reverse mortgage loan at maturity;

(6) "Fannie Mae" means The Federal National Mortgage Association, a corporation

organized and existing under the laws of the United States;

(7) "Fannie Mae Reverse Mortgage Loan" means any reverse mortgage loan which complies with Fannie Mae guidelines and is purchased or securitized by Fannie Mae including a Home Keeper Mortgage Loan;

(8) "Home equity conversion mortgage loan" means a loan for a definite or indefinite term:

(A) Secured by a first mortgage or first deed of trust on the principal residence of the mortgagor;

(B) The proceeds of which are disbursed to the mortgagor in one (1) or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent;

(C) That requires no repayment until a future time, upon the earliest occurrence of one (1) or more events specified in the reverse mortgage loan contract; and

(D) Is labeled clearly on the face of the note and deed of trust or mortgage, if a HUD Loan, "This is a Home Equity Conversion Mortgage Loan pursuant to Tennessee Code Annotated, Title 47, Chapter 30," or, if it is a Fannie Mae Reverse Mortgage Loan, contains on the face of the note and deed of trust or mortgage the words "Home Keeper Mortgage" or "Fannie Mae Reverse Mortgage," pursuant to this chapter;

(9) "HUD" means the United States department of housing and urban development;

(10) "Outstanding balance" means the current net amount of money owed by the borrower to the lender, calculated in accordance with § 47-30-106, whether or not the sum is suspended under the terms of the reverse mortgage loan agreement or is immediately due and payable;

(11) "Reverse mortgage" means a mortgage or deed of trust securing a home equity conversion loan or reverse mortgage loan;

(12) "Reverse mortgage loan" means a home equity conversion mortgage loan issued under the terms of this chapter;

(13) "Securitized" means converting mortgages or deeds of trust into securities that may be purchased by investors;

(14) "Shared appreciation" means an agreement by the lender and the borrower that, in addition to any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of any net appreciated value of the property during the term of the reverse mortgage loan; and

(15) "Total annual percentage rate" means the annual average rate of interest, which provides the total amount owed at loan maturity when this rate is applied to the loan advances, excluding closing costs not paid to third parties, over the term of the reverse mortgage loan.

HISTORY: Acts 1993, ch. 410, § 3; 1997, ch. 286, §§ 1-3.

47-30-103. Authorized lenders -- Designation -- Application.

(a) No person, firm, or corporation shall engage in the business of making reverse mortgage loans, unless such person, firm, or corporation is an authorized lender.

(b) The Tennessee housing development agency, and any bank, savings institution, or credit union, shall be designated an authorized lender by providing notice, not less than thirty (30) days prior to making any home equity conversion loan or reverse mortgage loan, to the commissioner of its intent to make such loans and stating an effective date. This notification shall be made on a form prescribed by the commissioner and shall contain all information required by the commissioner and contain evidence that the applicant is an approved Fannie Mae or HUD lender. The commissioner may object to the notice by denying the designation prior to the effective date and shall state in the objection any reasons therefor.

(c) Any person, firm, or corporation not included in subsection (b) shall file an application for authorization to make reverse mortgage loans, in writing, to the commissioner and in the form prescribed by the commissioner. The application shall contain the name and complete business address or addresses of the applicant and contain evidence that the applicant is an approved Fannie Mae or HUD lender. The application shall also include such information the commissioner deems necessary to evaluate the applicant. Such information may include, but is not limited to, affirmation of financial solvency, all capitalization requirements that are required by the commissioner, and the character, personal experience and business plan of the applicant. The application shall be accompanied by a nonrefundable fee, payable to the commissioner in an amount established by rule. If the commissioner approves the application, the commissioner shall designate the applicant as an authorized lender.

(d) The commissioner shall maintain a list of authorized lenders.

HISTORY: Acts 1993, ch. 410, § 4; 1997, ch. 286, § 4.

47-30-104. Compliance -- Noncomplying loans unenforceable -- Counseling.

(a) No authorized lender shall issue a reverse mortgage loan contract unless it complies with all requirements for participation in HUD's Home Equity Conversion Mortgage Program (or other similar federal reverse mortgage loan program from time to time created) and is insured by the federal housing administration or other similar federal agency or is a Fannie Mae Reverse Mortgage Loan.

(b) Any home equity conversion loan, reverse mortgage loan, mortgage or deed of trust

which fails to comply with this chapter is unenforceable as to all interest, service fees, and insurance premiums incurred on the loan.

(c) Prior to accepting an application for a home equity conversion loan, an authorized lender shall refer the borrower to a counselor and shall receive certification from the counselor that all borrowers have received counseling.

HISTORY: Acts 1993, ch. 410, § 5; 1997, ch. 286, § 5.

47-30-105. Contract for the payment of interest.

Notwithstanding any other law to the contrary, the parties to a reverse mortgage loan may contract for the payment of interest at a rate which does not exceed the rate permitted for home loans under chapter 15 of this title. Interest shall be deferred until the earliest occurrence of one (1) or more events specified in the reverse mortgage loan contract. Payment of interest on deferred interest shall be as agreed upon by the parties to the contract. The parties may agree that the deferred interest may be added to the outstanding balance of the loan.

HISTORY: Acts 1993, ch. 410, § 6.

47-30-106. Contract may require borrower to pay certain taxes, premiums and assessments.

A reverse mortgage loan contract may provide that it is the primary obligation of the borrower to pay some or all of the property taxes, hazard insurance premiums, private or federal mortgage insurance premiums, and assessments, in a timely manner, and that the failure of the borrower to make these payments and to provide evidence of payment to the lender may constitute grounds for default of the loan. A reverse mortgage loan contract shall state that if a borrower fails to pay property taxes, insurance premiums, or assessments, the lender may choose, at the lender's option, to pay the amounts due, charge them to the loan, and recalculate regularly scheduled payments under the loan to account for the increased outstanding loan balance.

HISTORY: Acts 1993, ch. 410, § 7.

47-30-107. Fees -- Calculation of outstanding loan balance -- Prepayment.

(a) If a reverse mortgage loan contract allows for a change in the payments or payment options, the lender may charge a reasonable fee when payments are recalculated.

(b) The reverse mortgage loan contract may provide for:

(1) A monthly service fee;

(2) A fee for mortgage insurance premiums, which may be collected monthly or in advance. These fees shall not exceed the monthly service fee or insurance premium permitted by HUD for participation in the Home Equity Conversion Mortgage Program or by

Fannie Mae for a Fannie Mae Reverse Mortgage Loan;

(3) Repair administration fee, which complies with Fannie Mae guidelines or HUD regulations; and

(4) An equity share, including shared appreciation, if the transaction is a Fannie Mae Reverse Mortgage Loan of any principal amount notwithstanding § 47-24-102.

(c) The outstanding loan balance shall be calculated by adding the current totals of items described in subdivisions (c)(1)-(4), and subtracting the current totals of all reverse mortgage loan payments made by the borrower to the lender:

(1) The sum of all disbursements made by the lender to the borrower, or to another party on the borrower's behalf;

(2) All taxes, assessments, hazard insurance premiums, mortgage insurance premiums, monthly service fees, and other similar charges paid to date by the lender under § 47-30-106 and not reimbursed by the borrower within sixty (60) days of the date payment was made by the lender;

(3) All actual closing costs the borrower has deferred, if a deferral provision is contained in the loan agreement; and

(4) The total accrued interest to date.

(d) Prepayment of the reverse mortgage loan, in whole or part, is permitted without penalty at any time during the term of the loan.

HISTORY: Acts 1993, ch. 410, § 8; 1997, ch. 286, § 6.

47-30-108. Amount owed by borrower when loan is due -- Enforcement of debt.

(a) When a reverse mortgage loan, other than a Fannie Mae Reverse Mortgage Loan, becomes due, if the borrower mortgaged one hundred percent (100%) of the full value of the house, then the amount owed by the borrower shall not be greater than:

(1) The fair market value of the house, minus sale costs; or

(2) The outstanding balance of the loan,

whichever amount is less.

(b) If the borrower mortgaged less than one hundred percent (100%) of the full value of the house, the amount owed by the borrower shall not be greater than:

(1) The outstanding balance of the loan; or

(2) The percentage of the fair market value, minus sale costs, as provided in the contract;

whichever amount is less.

(c) The lender shall enforce the debt only through the sale of the property and shall not obtain a deficiency judgment against the borrower.

HISTORY: Acts 1993, ch. 410, § 9; 1997, ch. 286, § 7.

47-30-109. Provision of information to the commissioner.

(a) On forms prescribed by the commissioner, all authorized lenders shall provide all of the following information to the commissioner for dissemination to all counselors who provide counseling to prospective reverse mortgage borrowers:

(1) The borrower's rights, obligations, and remedies with respect to the borrower's temporary absence from the home, late payments by the lender, and payment default by the lender;

(2) Conditions or events that require the borrower to repay the loan obligation;

(3) The right of the borrower to mortgage less than the full value of the home, if permitted by the reverse mortgage loan contract;

(4) Either the projected total annual percentage rate, as defined in § 47-30-102, or a table of projected "Total Annual Loan Cost Rates" calculated in accordance with § 226.33 of Regulation Z (12 CFR 226.33) of the Federal Truth in Lending Act, 15 USC § 1601 et seq. applicable under various loan terms and appreciation rates and interest rates applicable at sample ages of borrowers;

(5) Standard closing costs;

(6) All service fees to be charged during the term of the loan; and

(7) Other information required by the commissioner.

(b) Within ten (10) business days after application is made by a borrower, but not less than twenty (20) business days before closing of the loan, lenders shall provide applicants with the same information required in subsection (a), shall inform applicants that reverse mortgage counseling is required before the loan can be closed, and shall provide the names and addresses of counselors listed with HUD or Fannie Mae.

HISTORY: Acts 1993, ch. 410, § 10; 1997, ch. 286, § 9.

47-30-110. Lender to provide borrower with name of agent to answer inquiries -- Annual statement of account.

(a) At the closing of the reverse mortgage loan, the lender shall provide to the borrower the name of the lender's employee or agent who has been designated specifically to respond to inquiries concerning reverse mortgage loans. This information shall be provided by the lender to the borrower at least annually, and whenever the information concerning the designated employee or agent changes.

(b) On an annual basis and when the loan becomes due, the lender shall issue to the borrower, without charge, a statement of account regarding the activity of the mortgage for the preceding calendar year, or for the period since the last statement of account was provided. The statement shall include all of the following information for the preceding year:

- (1) The outstanding balance of the loan at the beginning of the statement period;
- (2) Disbursements to the borrower;
- (3) The total amount of interest added to the outstanding balance of the loan;
- (4) Any property taxes, hazard insurance premiums, mortgage insurance premiums, or assessments paid by the lender;
- (5) Payments made to the lender;
- (6) The total mortgage balance owed to date; and
- (7) The remaining amount available to the borrower in reverse mortgage loans wherein proceeds have been reserved to be disbursed in one (1) or more lump sum amounts.

HISTORY: Acts 1993, ch. 410, § 11.

47-30-111. Lender's default -- Applicability.

(a) A lender's failure to make loan advances to the borrower under the reverse mortgage loan contract shall be deemed the lender's default of the contract. Upon the lender's default, the lender shall forfeit any right to collect interest or service charges under the contract. The lender's right to recovery at loan maturity shall be limited to the outstanding balance as of the date of default, minus all interest. Lenders may also be subject to other default penalties established by the commissioner.

(b) Subsection (a) shall not apply if the lender has previously declared the borrower in default under § 47-30-112, or if the lender makes the required loan advance within the time stated in the mortgage contract or within thirty (30) days of receipt of notice from the borrower that the loan advance was not received.

HISTORY: Acts 1993, ch. 410, § 12.

47-30-112. Borrower's default -- Terms and conditions.

A reverse mortgage loan contract may provide for a borrower's default, thereby triggering early repayment of the loan, based only upon one (1) or more of the following terms and conditions:

- (1) The borrower fails to maintain the residence as required by the contract;
- (2) The borrower sells or otherwise conveys title to the home to a third party;
- (3) The borrower dies and the home is not the principal residence of the surviving borrower;
- (4) The home is not the principal residence of at least one (1) of the borrowers for a period of twelve (12) consecutive months for reasons of physical or mental illness;
- (5) For reasons other than physical or mental illness, the home ceases, without prior written permission from the lender, to be the principal residence of the borrower for a period of ninety (90) consecutive days and is not the principal residence during such period of another borrower under the loan;
- (6) The borrower fails to pay property taxes, hazard insurance premiums, mortgage insurance premiums, service fees or assessments under § 47-30-106; or
- (7) The mortgage or deed of trust ceases to constitute a first lien on the property securing the reverse mortgage loan.

HISTORY: Acts 1993, ch. 410, § 13; 1997, ch. 286, § 10.

47-30-113. Notice of foreclosure -- Continuation of interest.

When a borrower's obligation to repay the reverse mortgage loan is triggered under § 47-30-112, in addition to all rights conferred upon owners and borrowers under title 35, chapter 5, the lender must give the borrower not less than sixty (60) days' notice of its intent to initiate foreclosure proceedings. If the contract so provides, interest will continue to accrue during the sixty-day period.

HISTORY: Acts 1993, ch. 410, § 14.

47-30-114. Future advances -- Exemption from other law.

(a) A reverse mortgage may provide that it secures not only existing indebtedness or advances made contemporaneously with the execution thereof, but also future advances, whether obligatory or optional, or both, and whether made under open-end credit

agreements or otherwise, to the same extent as if such future advances were made contemporaneously with the execution of the mortgage, even though no advance is made at the time of the execution of the mortgage and even though no indebtedness is outstanding at the time any advance is made.

(b) All advances made under a reverse mortgage, whether obligatory or optional, relate back to the time of the recording of the mortgage, and are prior and superior to subsequent encumbrances and conveyances, if made in accordance with this chapter.

(c) All reverse mortgages, in order to have the priority provided in this section, must contain a statement or notice essentially equivalent to that set forth in § 47-30-102.

(d) A reverse mortgage or reverse mortgage loan made in accordance with this chapter is exempt from chapter 28 of this title.

HISTORY: Acts 1993, ch. 410, § 15.

47-30-115. Prohibited acts.

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

(1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise;

(2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment;

(3) Improperly refusing to issue a release of a mortgage;

(4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person;

(5) Contracting for or receiving shared appreciation, except that this subdivision (5) shall not apply to any Fannie Mae Reverse Mortgage Loan;

(6) Closing a reverse mortgage loan without receiving certification from a counselor that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower; or

(7) Failing to comply with this chapter.

HISTORY: Acts 1993, ch. 410, § 16; 1997, ch. 286, § 11.

47-30-116. Rules -- Notice of violation -- Penalties -- Civil actions.

(a) The commissioner shall adopt rules necessary to implement and enforce this chapter.

Upon finding probable cause to believe that an authorized lender or any other person, firm, or corporation is in violation of this chapter, or of any law or any rule or regulation of this state, the United States, or an agency of the state or the United States, the commissioner shall, after affording reasonable notice and opportunity to be heard to the lender, order the lender to cease and desist from the violation.

(b) If a lender fails to comply with or appeal the commissioner's cease and desist order, the lender is subject to a civil penalty of one thousand dollars (\$1,000) for each violation that is the subject of the cease and desist order. The penalty imposed under this section is in addition to and not in lieu of penalties available under any other law applicable to a reverse mortgage lender.

(c) Upon a finding that a reverse mortgage lender has violated this chapter, the commissioner may revoke, temporarily or permanently, the authority of the lender to make reverse mortgage loans.

(d) A person damaged by a lender's actions may file an action in civil court to recover actual and punitive damages. Attorneys' fees shall be awarded to a prevailing borrower. Nothing in this chapter shall limit any statutory or common law right of a person to bring an action in court for any act, nor shall this chapter limit the right of the state to punish a person for the violation of any law.

HISTORY: Acts 1993, ch. 410, § 17.

47-30-117. Legislative intent -- Construction with other laws.

It is the intent of the general assembly to authorize reverse mortgage loans under the provisions, terms and conditions imposed by this chapter. Nothing in this chapter shall be construed to apply to or restrict any loan, mortgage, or deed of trust which is valid under any other provision.

HISTORY: Acts 1993, ch. 410, § 18.

47-30-118. Fannie Mae Reverse Mortgage Loans.

(a) When a Fannie Mae Reverse Mortgage Loan becomes due, the amount owed by the borrower shall not be greater than:

(1) The fair market value of the house; or

(2) The outstanding balance of the loan, including any equity share, if applicable under the terms of the contract,

whichever is less.

(b) The lender shall enforce the debt only through the sale of the property and shall not obtain a deficiency judgment against the borrower.

HISTORY: Acts 1997, ch. 286, § 8.