

**SUMMARY OF  
RHODE ISLAND HOME LOAN PROTECTION ACT  
(S 2841 Amended Sub)**

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The Act covers “home loans,” including open-end credit plans but excluding reverse mortgages, secured by borrower’s principal dwelling (1-4 family residence). The definition of “creditor” includes “loan brokers” under Rhode Island law.

State and federally-chartered banks and savings institutions and their wholly-owned subsidiaries are *exempt* from the Act, as are the Federal Housing Administration, the Veterans Administration and other state or federal housing agencies.

“High-cost home loan” means a home loan exceeding one of the following “thresholds”:

- “Interest rate” equal to 8% (first mortgages) or 9% (subordinate mortgages) or 9% above comparable U.S. Treasury yield measured as of 15<sup>th</sup> day of month immediately preceding month that loan application received by the lender.
- “Total points and fees” (less excludable items) greater than 5% (loans less than \$50,000) or 8% (loans \$50,000 or greater), based on “total loan amount.”
  - “Total loan amount” is face amount of note or total line of credit.

“Points and fees” defined as –

- TILA finance charges,
- Section 32(b)(1)(iii) charges (otherwise excludable (c)(7) charges that are paid to creditor or affiliate of creditor or are unreasonable),
- All compensation paid by borrower directly to a loan broker,

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- All indirect broker compensation in excess of 1% of the total loan amount,
- Credit insurance premiums and debt cancellation charges financing by the creditor,
- Maximum prepayment penalties that may be charged or collected under the loan documents, and
- All prepayment fees or penalties incurred by borrower if the loan refinances a previous loan held by the creditor or an affiliate of the creditor.

*EXCLUDING, however -*

- Up to and including 1% of total loan amount for government-related payment insurance (e.g., VA and FHA), plus 2% of total loan amount attributable to “bona fide discount points” or a “conventional prepayment penalty,”
- Taxes, filing fees, recording and other similar charges paid or to be paid to public officials, and
- Bona fide and reasonable third party fees (not payable to creditor or an affiliate of creditor), with listing of permissible fees.

For open-end loans, points and fees are calculated based on “fees known at or before closing,” prepayment fees and the minimum additional fees the borrower would be required to pay to draw down the total credit line.

Prohibitions on *all* home loans are:

- Financing of credit insurance premiums or any other health or life insurance premiums or debt cancellation charges.
- “Flipping a home loan,” which is refinancing a home loan within sixty (60) months when the new loan does not have “reasonable, tangible net benefit” (as defined in the statute) to the borrower under all of the circumstances.”
  - “Tangible net benefit” means, at the time of refinancing, the new loan meets, at a minimum, one of the following:
    - o Borrower’s new monthly payment is less than total of all monthly obligations being financed (taking into account costs and fees shown on HUD-1),
    - o Beneficial change in the amortization period of new loan,
    - o Borrower receives cash in excess of costs and fees (as shown on HUD-1) from the refinancing,

- o Borrower's current note rate of interest is reduced, or if more than one loan is being refinanced, the weighted average note rates of the current loans is reduced,
  - o There is a change from an adjustable rate loan to a fixed rate loan, or
  - o The refinancing is necessary to respond to a bona fide personal need or an order of a court of competent jurisdiction.
- Encouraging or recommending default on any loan or debt prior to or in connection with any closing or planned closing of a home loan that refinances such loan or debt.
  - Clause that permits acceleration in creditor's sole discretion (but no prohibition on acceleration of the loan in good faith due to borrower's failure to abide by the material terms of the loan).
  - Provisions (i) requiring borrower to assert claims or defenses in "less convenient, more costly or more dilatory" forum than Rhode Island court or (ii) limiting in any way a claim or defense a borrower may have.

*Limitations and prohibitions on high-cost home loans include extensive menu of terms and practices, including prohibitions or limitations on late fees, default interest, prepayment fees and posting of payments, and requirement of home ownership counseling and creditor's reasonable belief in repayment.*

*Assignee liability* is two-fold –

- *First*, "any person who purchases or is otherwise assigned a high-cost home loan" is liable for all affirmative claims and defenses that the borrower could assert against the original creditor, *provided* that there is no assignee liability if the purchaser or assignee demonstrates that it:
  - has in place, at the time of purchase or assignment, policies that expressly prohibit purchase or acceptance of high-cost home loans,
  - requires by contract that the seller or assignor will not sell high-cost home loans, *and*
  - exercises reasonable due diligence at the time of purchase or assignment of high-cost home loans (or reasonable time thereafter) intended to prevent purchase or assignment of high-cost home loans, *provided that* such due diligence may consist of "sampling" and does not require "loan-by-loan review."

- *Second*, a borrower (acting only in an individual capacity) may assert claims that the borrower could assert against a creditor, limited to the amount required to reduce or extinguish the borrower’s liability under the high-cost home loan, as follows:
  - As an action by the borrower, within 5 years of closing of the high-cost home loan,
  - As a defense, claim, counterclaim or action to enjoin foreclosure or preserve or obtain possession of the home securing the loan, at any time during the term of the high-cost home loan but only after any action to collect or foreclose or after the debt has been accelerated or is in default for 60 days or more.
- These two sets of borrower remedies against assignees are independent of each other, such that satisfaction of the “safe harbor” elements of the first type of liability, which would serve to negate assignee liability, will not eliminate the second type of assignee liability.

Borrower remedies are extensive, and include damages and injunctive relief. Bad faith “structuring” of loan transactions (subterfuge) or other evasions may constitute violations of the Act.

The Act contains limited “cure” opportunities. A creditor in a home loan who, when acting in good faith, fails to comply with the Act may be relieved of liability –

- if the creditor effectuates a cure within 30 days of loan closing (but prior to the institution of any action) or,
- if the compliance failure was unintentional, resulted from bona fide error and occurred notwithstanding the maintenance of compliance procedures reasonably adapted to avoid such error, the creditor effectuates cure within 60 days of discovery of the error (but prior to the institution of any action); examples of “bona fide error” are limited to clerical errors, errors in calculation, computer malfunction and programming and printing errors, but do not include errors in legal judgment.

The Department of Business Regulation is empowered to promulgate rules and regulations under the Act.