

Getting Approved to Originate FHA/Conventional Reverse Mortgages

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State Law Approval Requirements for Reverse Mortgages

- Threshold question: How will you be soliciting loans?
 - Retail offices?
 - Brokers?
 - Financial advisors/insurance agents?

- Traditional mortgage licensing requirements (and exemptions) generally apply.
 - Licensing laws applicable to brokers, lenders, table-funding brokers, loan correspondents, and servicers.

 - Under the new National Mortgage Licensing System, applicants must identify whether they will be engaged in reverse mortgage lending activities (among other business activities).

- Some states' licensing obligations depend upon whether loans are closed- or open-end credit, the loan amount, lien position, or interest rate.

State Law Approval Requirements for Reverse Mortgages

- While state mortgage licensing requirements typically apply to reverse mortgages, a number of states directly impose separate licensing requirements in connection with reverse mortgage lending.
- Hawaii – Hawaii’s real property/mortgage statute provides that only lenders licensed or chartered under state or federal law may make reverse mortgage loans.
 - However, the statute does not apply to a loan: (1) insured by HUD; (2) intended for sale to Fannie Mae or Freddie Mac; or (3) for which mortgage counseling is required under state or federal laws. Thus, the applicability of the provision is severely limited.
 - Statute does not identify what Hawaii license would be needed, whether a license from any state would be sufficient, or whether HUD approval would be acceptable for a "federally licensed lender."
 - Hawaii’s Mortgage Brokers and Solicitors Act otherwise requires licensing to make (but not to service or purchase) mortgage loans.
- Iowa – Before a financial institution (including a mortgage lender) may make a reverse mortgage loan, it must submit to its licensing agency a prototype plan under which reverse mortgage loans are to be made. The plan must include a copy of the documents, a detailed description of how the plan will function, and other information as the administrator requires.

State Law Approval Requirements for Reverse Mortgages

- Louisiana – The state’s Residential Mortgage Lending Act (RMLA) expressly applies to closed-end residential mortgage loans (and thus arguably includes reverse mortgage loans).
 - Expressly applies to HUD-insured loans and loans intended to be sold to Fannie Mae.
 - Requires a license to engage in the origination or funding of residential mortgage loans. Thus, while the RMLA does not generally require a license to service “forward” mortgage loans, it is unclear whether the statute’s applicability to funding loans may include advancing funds to the borrower (or to a servicer by an investor) of reverse mortgage loans.
 - (Note: The state’s regulators have opined that the statute applies to open-end loans, as well, in spite of the legislative text limiting it to closed-end loans.)

- Massachusetts - The Debt Collector Licensing and Third Party Loan Servicer Registration Act requires third-party loan servicers to be registered.
 - Defines “servicing” in connection with a reverse mortgage to mean "making payments to the borrower," and requires registration for nonexempt persons engaging in that activity (among others).
 - Requires bond in the sum of \$25,000.
 - Express exemption only for licensed debt collectors.
 - The Banking Code also requires banks to submit a program for reverse mortgage loans to the Department for approval. Does not strictly apply to other lenders, although they have reportedly continued to comply.

State Law Approval Requirements for Reverse Mortgages

- New York – An entity seeking to make reverse mortgage loans must obtain approval from the Banking Department, even if the entity is otherwise licensed or exempt from licensing under the Licensed Mortgage Bankers Law.
 - Must have minimum capital of \$10 million, or parent company net worth of \$100 million. Must also have irrevocable letter of credit to fund 12 months of loans or \$3 billion (unless sufficient rating). If not, may only make limited types of loans.
 - HECM loans are exempt, and loans originated pursuant to a Fannie Mae purchase commitment also are exempt from the approval requirements (although they remain subject to certain substantive requirements).
 - Banking Department confirmed that approval requirements do not apply to traditional brokering activities (although unclear/possible that approval required for table-funding brokers).
- North Carolina – Under North Carolina’s Reverse Mortgage Act, a person or entity must obtain approval as an authorized lender by the Bank Commissioner to engage in the business of making reverse mortgage loans, unless exempt.
 - An exempt entity must still give Commissioner prior notice of intent to make reverse mortgage loans.
 - Must have net worth of \$500,000, or parent’s net worth of \$1 million. Surety bond of \$100,000.
- Tennessee – Under Tennessee’s Home Equity Conversation Mortgage Act, a person may not engage in the business of making reverse mortgage loans, unless that person is an authorized lender or is exempt. However, the Act does not indicate that the authorization obligation extends to servicing, purchasing, or funding a reverse mortgage loan.

Special Approval Requirements for Reverse Mortgages

- Some states may indirectly require a license under certain circumstances. For example:
 - Maine – State’s version of Truth in Lending Act (within Consumer Credit Code) imposes disclosure requirements for reverse mortgage loans, indicating that a license or notification filing under the Code is required.
 - New Jersey – Statute allows institutions “authorized in New Jersey to make first-
lien mortgage loans” also to make reverse annuity mortgages and reverse direct
payment mortgages, subject to certain conditions, suggesting that only licensees
(or expressly exempt entities) may make reverse mortgage loans.
 - South Carolina – Defines a “reverse mortgage loan,” in part, as a loan made by
a lender authorized to engage in business as, among others, a “supervised
lender,” arguably indicating that license is required.

Other State Law Requirements for Reverse Mortgages

Substantive requirements and limitations (with/without approval requirements described above).

- Disclosure requirements.
- Generally require counseling referral and/or certificate.
- Some states (e.g., California) prohibit tying with annuity. However, a few states recognize the permissibility of annuities in connection with reverse mortgage loans (e.g., Iowa, Maine, New Jersey).
- Shared appreciation permitted in several states.
 - Maine
 - New York (limited in 70-year program)
 - North Carolina (in HECM, HomeKeeper, other approved programs)
 - Tennessee (in HECM only)
- Predatory Lending Laws – Many state predatory lending laws exclude reverse mortgage loans. However, the laws of a few jurisdictions (including Arkansas, Illinois (including Cook County and Chicago) and Utah) do not exclude.

- Many state requirements apply even to FHA/HECMs.
 - Except Hawaii, New York

- Broker Duty of Care – Several states (e.g., California), and pending federal legislation, impose a duty upon mortgage brokers to ensure borrower gets an appropriate loan. To the extent those requirements apply to reverse mortgage loans, may present a particular compliance concern for those loans.

California Requirements for Reverse Mortgages

- **Licensing:**
 - California's Civil Code defines a "reverse mortgage," in part, as a nonrecourse mortgage loan made by a lender licensed or chartered pursuant to the laws of California or the United States.
 - California licenses mortgage lenders and brokers under three statutes:
 - Residential Mortgage Lending Act (the "RMLA") – Unless exempt, license required to make residential mortgage loans (defined broadly, and so would arguably include reverse mortgage loans). License also required to service loans, defined to mean, in part, receiving payments. Thus, not entirely clear how definition would apply to a servicer (funder) of reverse mortgage loans.
 - Real Estate Law – Unless exempt, license required to broker mortgage loans, or to service mortgage loans for others for a fee. Again, servicing under the Real Estate Law relates to collecting payments, but also relates broadly to performing services for borrowers, lenders, or note owners in connection with mortgage loans.
 - Finance Lenders Law (the "FLL") – Unless exempt, license required to make consumer loans (or commercial loans). "Consumer loan" is defined broadly and arguably would include a reverse mortgage loan (if proceeds intended for personal use). While the FLL does not impose licensing obligations for servicing consumer loans, its regulations impose requirements for how loans made by licensees must be funded, although it is unclear how those requirements apply to reverse mortgage loans.
 - Licensees under one of those licensing laws are exempt from the provisions of the remaining two licensing laws, but only to the extent that the activities authorized under their license are subject to licensing under the other two laws.
- **Special Practice Requirements:**
 - Foreign Language Translation – If negotiating primarily in a language other than English, must deliver to the borrower, prior to execution, a translation of the agreement in that language (unless the other party is negotiating through his/her own interpreter). (Applies also to lenders/brokers under the Real Estate Law or the FLL.)
 - Nontraditional Mortgage Guidance – Excludes reverse mortgage loans.
- **Pending Developments:**
 - Senate Bill 1065, introduced in January 2008; relates to home financing programs offered by local housing finance agencies, and may affect the ability of those agencies to offer reverse mortgage loans.

Recent State Legislative Activities on Reverse Mortgages

- Much more current activity in the realm of foreclosure prevention, mortgage fraud, subprime borrower protection measures.
- However, anecdotal information that bulk of regulator complaints are connected to reverse mortgage loans, next big problem area, want to avert potential crisis.

- States with pending reverse mortgage legislation (some of which were carried over from prior legislative session):
 - Arizona: New Approval Requirement.
 - House Bill 2506, introduced 1/18/08. Similar to California's requirements. If enacted, lenders and brokers would be required to be licensed or chartered under Arizona or federal law. Would require counseling and a foreign language translation, and prohibit requiring an annuity. No express exemption for FHA/Fannie Mae loans.

 - New Jersey: State Agency Program.
 - Assembly Bill 2380/Senate Bills 72/681, introduced 2/28/08. Would establish housing finance agency program for reverse mortgages to pay property taxes.

 - New York: Program Modifications; State Agency Program.
 - Assembly Bill 4735, introduced 2/6/07. Would raise minimum age on state's 60-year program to 62 years, add eligibility for cooperative apartments, delete the distinctions between "term" and "tenure" loans, and delete requirements applicable only to term loans.
 - Senate Bill 642, introduced 1/5/07. Would amend the statute to include in the 60-year program a new requirement that a lender may receive no more than 20% of the future appreciation of the property, or may charge a fixed rate of interest on monies advanced. (The 70-year program has an 20% statutory future appreciation limitation currently.)
 - Senate Bill 4062, introduced 3/23/07. Would create a reverse mortgage loan program within the state's mortgage agency for low-income seniors 65 years or older with needs for care services.

 - Rhode Island: New Approval Requirement.
 - House Bill 7723/Senate Bill 2598, introduced 2/26/08. Would revise requirements for reverse mortgages, imposing many restrictions common under other state laws (including counseling requirements). Would require all reverse mortgage loan officers to be registered and/or licensed as mortgage loan originators under the Lender and Loan Broker Act, unless exempt. Would exempt HECM loans.