

State Legislative Changes for Reverse Mortgage Lending

October 2, 2008

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Introduction

Types of reverse mortgages:

- HECMs
- Fannie Mae HomeKeeper
 - Fannie Mae terminates their purchase effective 12/31/2008
- Proprietary reverse mortgage products

Housing and Economic Recovery Act of 2008 - improvements

- Increase available loan amount
- Permits HECMs on purchase money and co-ops
- Lower Origination Fees

State Laws Also Apply to Reverse Mortgages

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 (Maine, NJ, SC)
 - Under the NMLS, applicants must identify whether they will be engaged in reverse mortgage lending activities (among other business activities) on MU-1.

Washington Amendments

- SB 6471 (effective June 12, 2008) requires all non-exempt lenders doing business in Washington be licensed under the Consumer Loan Act (CLA).
- CLA requires its licensees to use the simple interest method to calculate interest which precludes compounding of interest or negative amortization.
- Unintended result that, until fixed by the legislature, prohibits CLA licensees from making reverse mortgage loans.
- CLA and MBPA licensees can broker reverse mortgages to entities exempt from the CLA (nationally chartered entities), but CLA licensees cannot fund them in their own name.

Separate Reverse Licensing Requirements

- 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.
- Iowa – Before a financial institution (including a mortgage lender) may make a reverse mortgage loan, it must submit to the regulator a prototype plan for making reverse mortgage loans. The plan must include a copy of the documents, a detailed description of how the plan will function, and other information, as required.
- Massachusetts – Reverse mortgage loans must be made in accordance with programs which have been reviewed and approved by the Commissioner of Banks in accordance with M.G.L. ch. 167E, § 7. Entities brokering reverse mortgage loan must hold a valid broker license and are limited to acting in the capacity of a broker for reverse mortgage programs offered by lenders which are approved by the Commissioner.

Separate Reverse Licensing Requirements II

- 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 under the Licensed Mortgage Bankers Law. HECMs are exempt from approval requirement.
- North Carolina – Under Reverse Mortgage Act, a person must obtain approval as an authorized lender by the Office of the Bank Commissioner to make reverse mortgage loans, unless exempt. An exempt entity must still give prior notice to make these loans
- Rhode Island – Effective Jan. 1, 2009 (RI H. 7723/S. 2598) requires reverse mortgage officers be registered/licensed under RI Gen. Laws 19-14-1 et seq.
- Tennessee – Under Home Equity Conversation Mortgage Act, a person may not make reverse mortgage loans, unless that person is an authorized lender or is exempt. The Act does not indicate that the authorization requirement extends to servicing, purchasing, or funding a reverse mortgage loan.

Applicability of Fiduciary Duties on Brokers

- For brokers in states that impose a fiduciary duty on the broker - query whether the broker, to discharge that duty, must either:
 - also have access to and sell forward loans, so that the broker can offer another type of loan if a reverse mortgage is not a good fit or
 - if selling only reverse mortgage loans, turn away an applicant if a reverse mortgage is not a good fit for the applicant.
- Look for possibly other state laws that impose suitability criteria to ensure seniors obtain reverse mortgages only if appropriate.
- Massachusetts launched new website: www.mass.gov/reversemortgage to provide guidance to borrowers about reverse mortgage products.

Disclosures Requirements

- Consider whether the loan would fall under open-end or closed-end disclosure provisions of state law, under what license the loan is being made, etc.
- Examples of state reverse disclosure requirements include:
 - California (Cal. Civ. Code § § 1632, 1923.5, 1923.2)
 - Colorado (Colo. Rev. Code § 11-38-109 and § 11-38-111)
 - Maine (Code Me. R. § 8-206-B)
 - Illinois (Ill. Comp. Stat. tit. 205, § 635/5-5)
 - North Carolina (N.C. Admin. Code tit. 4, r. 03K.0501; r. 03K.0502)
 - South Carolina (S.C. Code Ann. § 29-4-60)
 - Rhode Island (R.I. Gen. Law § 34-25.1-10, effective Jan. 1, 2009)
- Some of these disclosures may be preempted by the Alternative Mortgage Transactions Parity Act or other theories of preemption.

Fee Restrictions

- Rhode Island – Effective Jan. 1, 2009, new reverse mortgage requirements, including restrictions on prepayment penalties. Limits fees to those statutorily prescribed.
- Delaware – Effective Oct. 7, 2008, licensing laws impose new restriction that lenders of reverse mortgages may not collect fees, except for listed third-party fees, before receiving confirmation that the borrower has received counseling.

Cooling Off Period

- Most reverse mortgage loans are subject to the right that borrowers have under TILA to rescind the loan within 3 business days of closing because they are not purchase money loans.
- Massachusetts requires a 7 day cooling off period following a consumer's acceptance of a commitment, during which a consumer cannot be required to close or proceed with the loan transaction.
- Rhode Island law will give an applicant a 3 business day review period prior to loan closing which is in addition to the 3 day right of rescission following loan closing.

Predatory Lending/Unfair Trade Practice

- Senior citizens are often considered more vulnerable to predatory practices than other borrowers. Concerns that information provided in sales pitches to consumers at times fails to communicate the complexity of loan features.
- Concerned with selling seniors unnecessary and overpriced annuities in tandem with reverse mortgages.
 - California prohibits -- and Rhode Island will soon prohibit (1/1/09) -- (i) requiring the purchase of an annuity as a condition of obtaining a reverse mortgage loan; (ii) offering an annuity to a borrower or referring the borrower to anyone for an annuity purchase prior to the closing of the loan or before the expiration of the rescission period.
- Certain state and local “high cost” loan laws (Arkansas, Illinois, including Cook County and Utah) do not exclude reverse mortgages or open-end loans in the definition of “high cost” and thus may require APR and points and fees testing for reverse mortgage loans.

Housing Counseling

- Delaware – Effective October 7, 2008, licensing laws impose new requirement that lenders of reverse mortgages may not accept any fee except bona fide third party fees before receiving confirmation that the borrower has received counseling from independent housing counselor.
- Rhode Island – Effective Jan. 1, 2009, mortgagee may pay the cost of counseling if service is not free. Lender may not process the reverse mortgage loan, other than ordering AVM and preliminary title search, until counseling completed and certificate received. Counseling certificate valid for 180 days. Lender must supply 3 agencies. Counseling required in person, but telephone counseling is permitted in limited instances.
- A number of other states also impose housing counseling requirements for reverse mortgages including, among others, California, New York, Illinois, and Massachusetts.

Licensing Requirements to Purchase or Service

- New York - Amendments to NY law to license servicers. Definition of servicing includes, “in the case of a home equity conversion mortgage or reverse mortgage...making payments to the borrower.”
- Massachusetts – Requires that third-party loan servicers be registered.
 - Defines “servicing” in connection with a reverse mortgage (or a home equity conversion mortgage) to mean "making payments to the borrower," and requires registration for nonexempt persons engaging in that activity (among others).
- Louisiana – RMLA 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 or Freddie
 - Requires a license to engage in the origination *or funding* of residential mortgage loans. Unclear if this would extend to an entity advancing funds on a reverse mortgage.

Servicing Practices

- General servicing laws may apply.
- A few states may specifically regulate servicing of reverse mortgage loans, for example Rhode Island. Effective Jan. 1, 2009 servicers of reverse mortgage loans in Rhode Island are required to provide annual account statements and contact information of servicer's employees or agents who can respond to inquiries.
- Query whether new state laws being enacted that extend the foreclosure timeline by requiring a notice be given a certain number of days before sending notice of acceleration apply to reverse mortgages. See Virginia SB 797 which took effect July 1, 2008.