

2007 -- S 0371

LC02077

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO RHODE ISLAND HOME LOAN PROTECTION ACT

Introduced By: Senators Pichardo, Walaska, and Bates

Date Introduced: February 13, 2007

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 34-25.2-7 and 34-25.2-11 of the General Laws in Chapter 34-25.2
2 entitled "Rhode Island Home Loan Protection Act" are hereby amended to read as follows:

3 **34-25.2-7. Assignee liability.** ~~[Effective December 31, 2006.]~~ -- (a) Any person who
4 purchases or is otherwise assigned a high-cost home loan shall be subject to all affirmative claims
5 and any defenses with respect to the loan that the borrower could assert against the original
6 creditor of the loan; provided, that this ~~subsection (a)~~ section shall not apply if the purchaser or
7 assignee demonstrates by a preponderance of the evidence that it:

8 (1) Has in place at the time of the purchase or assignment of the subject loans, policies
9 that expressly prohibit its purchase or acceptance of assignment of any high-cost home loans;

10 (2) Requires by contract that a seller or assignor of home loans to the purchaser or
11 assignee represents and warrants to the purchaser or assignee that either: (a) the seller or assignor
12 will not sell or assign any high-cost home loans to the purchaser or assignee; or (b) that such
13 seller or assignor is a beneficiary of a representation and warranty from a previous seller or
14 assignor to that effect; and

15 (3) Exercises reasonable due diligence at the time of purchase or assignment of high-cost
16 home loans or within a reasonable period of time after the purchase or assignment of such high-
17 cost home loans, intended by the purchaser or assignee to prevent the purchaser or assignee from
18 purchasing or taking assignment of any high-cost home loans; provided, further, that reasonable
19 due diligence shall provide for sampling and shall not require loan-by-loan review.

1 (b) ~~Limited to amounts required to reduce or extinguish the borrower's liability under the~~
2 ~~high-cost home loan plus amounts required to recover costs, including reasonable attorneys' fees,~~
3 ~~a borrower acting only in an individual capacity may assert claims that the borrower could assert~~
4 ~~against a creditor of the high-cost home loan against any subsequent holder or assignee of the~~
5 ~~high-cost home loan as follows:~~ In the event that a purchaser or assignee does not prevail under
6 subsection (a), any recovery by a borrower, under this section, shall be limited to amounts
7 required to reduce or extinguish the borrower's liability under the high-cost home loan plus
8 amounts required to recover costs, including reasonable attorneys' fees. Any such claim asserted
9 by a borrower against a subsequent holder or assignee of the high-cost home loan may be asserted
10 by a borrower acting only in an individual capacity and must be asserted as follows:

11 (1) Within five (5) years of the closing of a high-cost home loan, a violation of this act in
12 connection with the loan as an original action; and

13 (2) At any time during the term of a high-cost home loan, after an action to collect on the
14 high-cost home loan or foreclose on the collateral securing the high-cost home loan has been
15 initiated or the debt arising from the high-cost home loan has been accelerated or the high-cost
16 home loan has become sixty (60) days in default, any defense, claim or counterclaim, or action to
17 enjoin foreclosure or preserve or obtain possession of the home that secures the loan.

18 (c) The provisions of this section shall be effective notwithstanding any other provision
19 of law; provided, that nothing in this section shall be construed to limit the substantive rights,
20 remedies or procedural rights available to a borrower against any creditor, assignee or holder
21 under any other law. ~~The rights conferred on borrowers by subsections (a) and (b) of this section~~
22 ~~are independent of each other and do not limit each other.~~

23 **34-25.2-11. Exemption. [Effective December 31, 2006.]** -- The provisions of this
24 chapter shall not apply to:

25 (a) Any national bank, federal savings bank, federal credit union, credit union, or
26 financial institution, as defined under section 19-1-1, or their wholly-owned subsidiary; and

27 (b) The Federal Housing Administration, the Department of Veterans Affairs, or other
28 state or federal housing finance agencies.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO RHODE ISLAND HOME LOAN PROTECTION ACT

1 This act would limit a borrowers recovery against a purchaser of assignee of a high cost
2 home loan to the amount necessary to extinguish the borrowers liability under the loan plus cost,
3 including reasonable attorneys' fees. This act would also exempt federal credit unions and credit
4 unions from the provisions of this chapter.

5 This act would take effect upon passage.

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