

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

A N A C T

RELATING TO PROPERTY -- RHODE ISLAND HOME LOAN PROTECTION ACT

Introduced By: Senators Pichardo, Paiva-Weed, Metts, Perry, and Goodwin

Date Introduced: February 16, 2006

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 25.2

4 RHODE ISLAND HOME LOAN PROTECTION ACT

5 **34-25.2-1. Short title.** – This chapter shall be known as the "Rhode Island Home Loan
6 Protection Act."

7 **34-25.2-2. Legislative findings.** – The general assembly finds that predatory lending has
8 become an increasing problem in this state, threatening the viability of many communities and
9 causing decreases in home ownership. While the marketplace may appear to be operating
10 effectively for most home loans, too many homeowners are falling victim to unprincipled
11 creditors who provide loans at exorbitant costs and include terms which are unnecessary to secure
12 repayment of the loan. The general assembly finds that as competition and self-regulation have
13 not eliminated the predatory terms for home-secured loans, the consumer protection provisions of
14 this chapter are necessary to encourage responsible lending.

15 **34-25.2-3. Purpose.** – The purpose of this act is to prohibit predatory lending practices in
16 this state while preserving access to credit in the subprime market.

17 **34-25.2-4. Definitions.** – The following definitions shall apply for the purposes of this
18 chapter, unless the context otherwise requires:

19 (a) "Accelerate" means the advancing of a loan agreement's maturity date so that payment

1 of the entire debt is due immediately.

2 (b) "Affiliate" means any company that controls, is controlled by, or is under common
3 control with another company, as set forth in 12 U.S.C. Section 1841.

4 (c) "Annual percentage rate" means the annual percentage rate for the loan calculated
5 according to the provisions of 12 C.F.R. part 226.

6 (d) "Bona fide discount points" means an amount knowingly paid by the borrower for the
7 express purpose of reducing, and which in fact does result in a bona fide reduction of, the interest
8 rate applicable to the home loan; provided the undiscounted interest rate for the home loan does
9 not exceed the conventional mortgage rate by two (2) percentage points for a home loan secured
10 by a first lien, or by three and one-half (3.5) percentage points for a home loan secured by a
11 subordinated lien.

12 (e) "Borrower" means any person obligated to repay the loan, including a co-borrower,
13 co-signor or guarantor.

14 (f) "Brokering" means to act as a loan broker as defined in Rhode Island general laws
15 section 19-14-1.

16 (g) "Conventional mortgage rate" means the most recently published annual yield on
17 conventional mortgages published by the board of governors of the Federal Reserve System, as
18 published in statistical release H.15 or any publication that may supersede it, as of the applicable
19 time set forth in 12 C.F.R. 226.32(a)(1)(i).

20 (h) "Conventional prepayment penalty" means any prepayment penalty or fee that may be
21 collected or charged in a home loan, and that is authorized by law other than this chapter,
22 provided the home loan: (1) does not have an annual percentage rate that exceeds the
23 conventional mortgage rate by more than two (2) percentage points; and (2) does not permit any
24 prepayment fees or penalties that exceed two percent (2%) of the amount prepaid.

25 (i) "Creditor" means any person who regularly makes available a home loan and shall
26 include a loan broker.

27 (j) "Department" means the department of business regulation.

28 (k) "Director" means the director of the department of business regulation.

29 (l) "High-cost home loan" means a home loan in which the terms of the loan meet or
30 exceed one of more of the thresholds as defined in subsection (r) of this section.

31 (m) "Home loan" means a loan, including an open-end credit plan, other than a reverse
32 mortgage transaction, where the loan is secured by:

33 (1) A mortgage or deed of trust on real estate in this state upon which there is located or
34 there is to be located a structure or structures designed principally for occupancy of from one to

1 four (4) families which is or will be occupied by a borrower as the borrower's principal dwelling;

2 or

3 (2) A security interest on a manufactured home which is or will be occupied by a
4 borrower as the borrower's principal dwelling.

5 (n) "Loan originator" means a natural person employee of a lender or loan broker that is
6 required to be licensed under Rhode Island general laws section 19-14-1 et seq., and who for or
7 with the expectation of a fee, commission or other valuable consideration and whose job
8 responsibilities include direct contact with applicants during the loan application process, which
9 includes soliciting, negotiating, acquiring, arranging or making mortgage loans, or who in
10 connection with the taking of loan applications or the taking of loan pre-approval requests obtains
11 personal financial information or other documents, quotes loan rates or terms, or provides
12 required disclosures.

13 (o) "Points and fees" means:

14 (1) All items included in the definition of finance charge in 12 C.F.R. 226.4(a) and 12
15 C.F.R. 226.4(b) except interest or the time price differential;

16 (2) All items described in 12 C.F.R. 226.32(b)(1)(iii);

17 (3) All compensation paid directly by a borrower to a loan broker including a loan broker
18 that originates a loan in its own name in a table-funded transaction;

19 (4) All compensation paid indirectly to a loan broker from any source other than the
20 borrower in excess of one percentage point of the total loan amount, including a loan broker that
21 originates a loan in its own name in a table-funded transaction;

22 (5) The cost of all premiums financed by the creditor, directly or indirectly for any credit
23 life, credit disability, credit unemployment or credit property insurance, or any other life or health
24 insurance, or any payments financed by the creditor directly or indirectly for any debt
25 cancellation or suspension agreement or contract, except that insurance premiums or debt
26 cancellation or suspension fees calculated and paid in full on a monthly basis shall not be
27 considered financed by the creditor;

28 (6) The maximum prepayment fees and penalties that may be charged or collected under
29 the terms of the loan documents; and

30 (7) All prepayment fees or penalties that are incurred by the borrower if the loan
31 refinances a previous loan originated or currently held by the same creditor or an affiliate of the
32 creditor.

33 (8) For open-end loans, the points and fees are calculated by adding the total points and
34 fees known at or before closing, including the maximum prepayment penalties which may be

1 charged or collected under the terms of the loan documents, plus the minimum additional fees the
2 borrower would be required to pay to draw down an amount equal to the total credit line.

3 (9) Points and fees shall not include:

4 (i) Points and fees up to and including one percent (1%) of the total loan amount
5 attributable to bona fide fees paid to a federal or state government agency that insures payment of
6 some portion of a home loan plus an amount not to exceed two percent (2%) of the total loan
7 amount attributable to a bona fide discount points or a conventional prepayment penalty. In no
8 case shall the total excluded points and fees in connection with a home loan exceed three percent
9 (3%) of the total loan amount;

10 (ii) Taxes, filing fees, recording and other charges and fees paid or to be paid to public
11 officials for determining the existence of or for perfecting, releasing or satisfying a security
12 interest; or

13 (iii) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate
14 of the creditor for the following: fees for tax payment services; fees for flood certification; fees
15 for pest infestation and flood determination; appraisal fees; fees for inspections performed prior
16 to closing; credit reports; surveys; attorneys' fees; notary fees; escrow charges, so long as not
17 otherwise included under subparagraph (1) of this paragraph; title insurance premiums; and fire
18 and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R.
19 226.4(d)(2) are met; or

20 (p) "Predatory lending" means any act and practice which is found in violation of those
21 acts and practices prohibited by sections 34-25.2-5 and 34-25.2-6 of this chapter.

22 (q) "Tangible, net benefit" means at the time of refinancing a home loan(s), the new home
23 loan(s) meet, at a minimum, one of the following:

24 (1) The borrower's new monthly payment(s) is lower than the total of all monthly
25 obligations being financed, taking into account the costs and fees as disclosed on the HUD-1
26 settlement statement;

27 (2) There is a beneficial change in the amortization period of the new loan(s);

28 (3) The borrower receives cash in excess of the costs and fees, as disclosed on the HUD-1
29 settlement statement, as part of the refinancing;

30 (4) The borrower's current note rate of interest is reduced, or in the event more than one
31 loan in being refinanced, the weighted average note rate of the current loans is reduced;

32 (5) There is a change from an adjusted rate loan(s) to a fixed rate loan(s); or

33 (6) The refinancing is necessary to respond to a bona fide personal need or an order of a
34 court of competent jurisdiction.

1 (r) "Threshold" means any one of the following two (2) items, as defined:

2 (1) "Rate threshold" means:

3 (i) for a first lien mortgage home loan, an interest rate equal to eight (8) percentage points
4 over the yield on comparable United States treasury securities on the fifteenth (15th) day of the
5 month immediately preceding the month in which the loan application was received by the
6 lender; and

7 (ii) for a subordinate mortgage lien, an interest rate equal to nine (9) percentage points
8 over the yield on comparable United States treasury securities on the fifteenth (15th) day of the
9 month immediately preceding the month in which the loan application was received by the
10 lender;

11 (2) "Total points and fees threshold" means:

12 (i) for loans in which the total loan amount is fifty thousand dollars (\$50,000) or more,
13 the total points and fees payable in connection with the home loan less any excluded points and
14 fees exceed five percent (5%) of the total loan amount; and

15 (ii) for loans in which the total loan amount is less than fifty thousand dollars (\$50,000)
16 the total points and fees payable in connection with the home loan less any excluded points and
17 fees exceed eight percent (8%) of the total loan amount.

18 (s) "Total loan amount" means the total amount the consumer will borrow, as reflected by
19 the face amount of the note. For open-end loans, the total loan amount shall be calculated using
20 the total line of credit allowed under the home loan at closing.

21 **34-25.2-5. Prohibited acts and practices regarding home loans. – A home loan shall**
22 **be subject to the following prohibited acts and practices.**

23 (a) No creditor making a home loan shall finance, directly or indirectly, any credit life,
24 credit disability, credit unemployment or credit property insurance, or any other life or health
25 insurance, or any payments directly or indirectly for any debt cancellation or suspension
26 agreement or contract, except that insurance premiums or debt cancellation or suspension fees
27 calculated and paid in full on a monthly basis shall not be considered financed by the creditor.

28 (b) No creditor shall knowingly or intentionally engage in the unfair act or practice of
29 flipping a home loan. "Flipping a home loan" is the making of a home loan to a borrower that
30 refinances an existing home loan that was consummated within the prior sixty (60) months when
31 the new loan does not have reasonable, tangible net benefit in accordance with subsection 34-
32 25.2-4(q), to the borrower considering all of the circumstances, including, but not limited to, the
33 terms of both the new and refinanced loans, the cost of the new loan, and the borrower's
34 circumstances.

1 (c) No creditor shall recommend or encourage default on an existing loan or other debt
2 prior to and in connection the closing or planned closing of a home loan that refinances all or any
3 portion of such existing loan or debt.

4 (d) No home loan may contain a provision that permits the creditor, in its sole discretion,
5 to accelerate the indebtedness. This provision does not prohibit acceleration of the loan in good
6 faith due to the borrower's failure to abide by the material terms of the loan.

7 (e) No home loan may contain a provision that allows a party to require a borrower to
8 assert any claim or defense in a forum that is less convenient, more, costly, or more dilatory for
9 the resolution of a dispute than a judicial forum established in this state where the borrower may
10 otherwise properly bring a claim or defense or limits in any way claim or defense the borrower
11 may have.

12 **34-25.2-6. Limitations and prohibited practices regarding high-cost home loans. -- A**
13 **high-cost home loan shall be subject to the following additional limitations and prohibited**
14 **practices:**

15 (a) In connection with a high-cost home loan, no creditor shall directly or indirectly
16 finance any points or fees which total is greater than five percent (5%) of the total loan amount of
17 eight hundred dollars (\$800) whichever is greater.

18 (b) No prepayment fees or penalties shall be included in the loan documents for a high-
19 cost home loan.

20 (c) No high-cost home loan may contain a scheduled payment that is more than twice as
21 large as the average of earlier scheduled payments. This provision does not apply when the
22 payment schedule is adjusted to the seasonal or irregular income of the borrower.

23 (d) No high-cost home loan may include payment terms under which the outstanding
24 principal balance or accrued interest will increase at any time over the course of the loan because
25 the regularly scheduled periodic payments do not cover the full amount of interest due.

26 (e) No high-cost home loan may contain a provision that increases the interest rate after
27 default. This provision does not apply to interest rate changes in a variable rate loan otherwise
28 consistent with the provisions of the loan documents, provided the change in the interest rate is
29 not triggered by the event of default or the acceleration of the indebtedness.

30 (f) No high-cost home loan may include terms under which more than two (2) periodic
31 payments required under the loan are consolidated and paid in advance from the loan proceeds
32 provided to the borrower.

33 (g) A creditor may not make a high-cost home loan without first receiving certification
34 from a counselor with a third-party nonprofit organization approved by the United States

1 Department of Housing and Urban Development that the borrower has received counseling on the
2 advisability of the loan transaction.

3 (h) A high-cost home loan shall not be extended to a borrower unless a reasonable
4 creditor would believe at the time the loan is closed that one or more of the borrowers will be able
5 to make the scheduled payments associated with the loan based upon a consideration of his or her
6 current and expected income, current obligations, employment status, and other financial
7 resources, other than the borrower's equity in the collateral that secures the repayment of the loan.
8 There is a rebuttable presumption that the borrower is able to make the scheduled payments to
9 repay the obligation if, at the time the loan is consummated, said borrower's total monthly debts,
10 including amounts under the loan, do not exceed fifty percent (50%) of said borrower's monthly
11 gross income as verified by tax returns, payroll receipts, and other third-party income verification.

12 (i) A creditor may not pay a contractor under a home-improvement contract from the
13 proceeds of a high-cost home loan, unless:

14 (1) the creditor is presented with a signed and dated completion certificate showing that
15 the home improvements have been completed; and

16 (2) the instrument is payable to the borrower or jointly to the borrower and the contractor,
17 or, at the election of the borrower, through a third-party escrow agent in accordance with terms
18 established in a written agreement signed by the borrower, the creditor, and the contractor prior to
19 the disbursement.

20 (j) A creditor may not charge a borrower any fees or other charges to modify, renew,
21 extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-
22 cost home loan.

23 (k) A creditor shall not make available a high-cost home loan that provides for a late
24 payment fee except as follows:

25 (1) The late payment fee shall not be in excess of three percent (3%) of the amount of the
26 payment past due.

27 (2) The late payment fee shall only be assessed for a payment past due for fifteen (15)
28 days or more or ten (10) days or more in cases of bi-weekly mortgage payment arrangement.

29 (3) The late payment fee shall not be imposed more than once with respect to a single late
30 payment. If a late payment fee is deducted from a payment made on the loan, and the deduction
31 causes a subsequent default on a subsequent payment, no late payment fee may be imposed for
32 the default.

33 (4) A creditor shall treat each payment as posted on the same business day as it was
34 received.

1 (1) All high-cost home loan documents that create a debt or pledge property as collateral
2 shall contain the following notice on the first page in a conspicuous manner: "Notice: This a high-
3 cost home loan subject to special rules under state law. Purchasers or assignees of this high-cost
4 home loan may be liable for all claims and defenses by the borrower with respect to the home
5 loan."

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

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

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

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

23 (b) Limited to amounts required to reduce or extinguish the borrower's liability under the
24 high-cost home loan plus amounts required to recover costs, including reasonable attorneys' fees,
25 a borrower acting only in an individual capacity may assert claims that the borrower could assert
26 against a creditor of the high-cost home loan against any subsequent holder or assignee of the
27 high-cost home loan as follows:

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

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

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

6 **34-25.2-8. Civil action.** – (a) An aggrieved borrower or borrowers may bring a civil
7 action for injunctive relief or damages in a court of competent jurisdiction for any violation of
8 this chapter.

9 (b) In addition, the court shall, as the court may consider appropriate:

10 (1) issue an order or injunction rescinding a home mortgage loan contract which violates
11 this chapter, or barring the lender from collecting under any home mortgage loan which violates
12 this chapter;

13 (2) issue an order or injunction barring any judicial or nonjudicial foreclosure or other
14 lender action under the mortgage or deed of trust securing any home mortgage loan which
15 violates this chapter;

16 (3) issue an order or injunction reforming the terms of the home mortgage loan to
17 conform to this chapter;

18 (4) issue an order or injunction enjoining a lender from engaging in any prohibited
19 conduct; or

20 (5) impose such other relief, including injunctive relief, as the court may consider just
21 and equitable.

22 (c) Originating or brokering a home loan that violates a provision of this section shall
23 constitute a violation of this chapter.

24 (d) A creditor in a home loan who, when acting in good faith, fails to comply with the
25 provisions of this act, will not be deemed to have violated this section if the creditor establishes
26 that either:

27 (1) Within thirty (30) days of the loan closing and prior to the institution of any action
28 under this chapter, the lender notifies the borrower of the compliance failure and makes
29 appropriate restitution and whatever adjustments are necessary are made to the loan, at the choice
30 of the borrower, to either:

31 (i) make the high-cost home mortgage loan satisfy the requirements of this chapter; or

32 (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan
33 will no longer be considered a high-cost home mortgage loan; or

34 (2) The compliance failure was not intentional and resulted from a bona fide error

1 notwithstanding the maintenance procedures reasonably adapted to avoid the errors, and within
2 sixty (60) days after the discovery of the compliance failure and before the institution of any
3 action under this chapter or the receipt of written notice of the compliance failure, the borrower is
4 notified of the compliance failure, appropriate restitution is made and whatever adjustments are
5 necessary are made to the loan, at the choice of the borrower, to either:

6 (i) make the high-cost home mortgage loan satisfy the requirements of this chapter; or

7 (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan
8 will no longer be considered a high-cost home mortgage loan.

9 Examples of a bona fide error may include clerical errors, errors in calculation, computer
10 malfunction and programming, and printing errors. An error in legal judgment with respect to a
11 person's obligation under this chapter shall not be considered a bona fide error.

12 (e) Notwithstanding any provision to the contrary contained in this chapter regarding
13 costs and attorneys' fees, in any action instituted by a borrower who alleges that the defendant
14 violated subsection 34-25.2-5(b), the borrower shall not be entitled to costs and attorneys' fees if
15 the presiding judge, in the judge's discretion, finds that, before the institution of the action by the
16 borrower, the lender made a reasonable offer to cure and that offer was rejected by the borrower.

17 **34-25.2-9. Subterfuge prohibited.** – It shall be a violation of this chapter for any person
18 to attempt in bad faith to avoid the application of this chapter by:

19 (a) Dividing any loan transaction into separate parts for the purpose of evading the
20 provisions of this chapter;

21 (b) Structuring a home loan transaction as an open-end loan for the purpose of evading
22 the provisions of this chapter when the loan would have been a high-cost home loan if the loan
23 had been structured as a closed-end loan;

24 (c) Engaging in any other subterfuge with the intent of evading any provision of this
25 chapter.

26 **34-25.2-10. Rights in addition to other laws.** – The rights conferred by this chapter are
27 independent of and in addition to any other rights under other laws.

28 **34-25.2-11. Exemption.** – The provisions of this chapter shall not apply to:

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

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

33 **34-25.2-12. Department of business regulation.** – The director may promulgate such
34 rules and regulations as are necessary and proper to carry out the provisions of this chapter. Rules

1 and regulations promulgated for subsections 34-25.2-4(q) and 34-25.2-5(b) may contain such
2 factors, classifications, differentiations or other provisions, and may provide for such adjustments
3 and exceptions for any class of transactions as, in the judgment of the director, are necessary or
4 proper to carry out those sections, to prevent circumvention or evasion thereof or to facilitate
5 compliance therewith.

6 **34-25.2-13. Reporting.** – The department shall report to the governor and the general
7 assembly on or before January 1, 2009, with regard to the effectiveness of this act in achieving its
8 purpose, which report shall include, but not be limited to:

9 (a) The reported incidence of prohibited practices by calendar quarter for the period
10 January 1, 2007 through June 30, 2008;

11 (b) The disposition, if any, of the reported incidences of prohibited practices;

12 (c) Findings and recommendations with regard to any improvements, amendments, or
13 changes that should be considered to make the act more effective in achieving its purposes or
14 which may be necessary in order to assure fair availability of credit.

15 **34-25.2-14. Liberal construction.** – This chapter shall be construed liberally in aid of its
16 declared purpose of protecting the homes and the equity of individual borrowers in this state.

17 **34-25.2-15. Severability.** – If any provision of this chapter or the application of this
18 chapter to any person or circumstances is held invalid or unconstitutional, the invalidity or
19 unconstitutionality shall not affect other provisions or applications of this chapter which can be
20 given effect without the invalid or unconstitutional provision or application, and to this end, the
21 provisions of this chapter are declared to be severable.

22 SECTION 2. This act shall take effect on December 31, 2006.

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LC01467/SUB A/2
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY -- RHODE ISLAND HOME LOAN PROTECTION ACT

1 This act would establish a home loan protection act to protect borrowers from predatory
2 lending practices.

3 This act would take effect on December 31, 2006.

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2006 -- S 2851
SUBSTITUTE A

H.

A N A C T

RELATING TO PROPERTY -- RHODE ISLAND HOME LOAN PROTECTION ACT

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LC01467/SUB A/2
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Presented by