

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2006-33

RECEIVED  
CITY OF PROVIDENCE  
MAY 22 2006  
CITY CLERK

No. 245

AN ORDINANCE

REGARDING PREDATORY LENDING

Approved June 12, 2006

Be it ordained by the City of Providence:

WHEREAS, While federal and state laws and regulations govern lending practices, the City of Providence Predatory Lending Ordinance protects consumers by ensuring that:

- The City will not use as a depository any bank that practices predatory lending. Banks that do business with the City of Providence must submit annual reports and pledge that they do not knowingly practice predatory or discriminatory lending.
- Licensed Home Repair contractors in Providence cannot receive funds directly from a home equity loan. Loans funds must be dispersed to the consumer, who will then pay the home repair contractor.
- Deceptive Practices and Consumer Fraud that may result in a Real Estate foreclosure are prohibited and carry a fine of up to \$10,000 plus restitution to the victim.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PROVIDENCE:

SECTION 1. The Code of Ordinances of the City of Providence is hereby amended by adding the following sections:

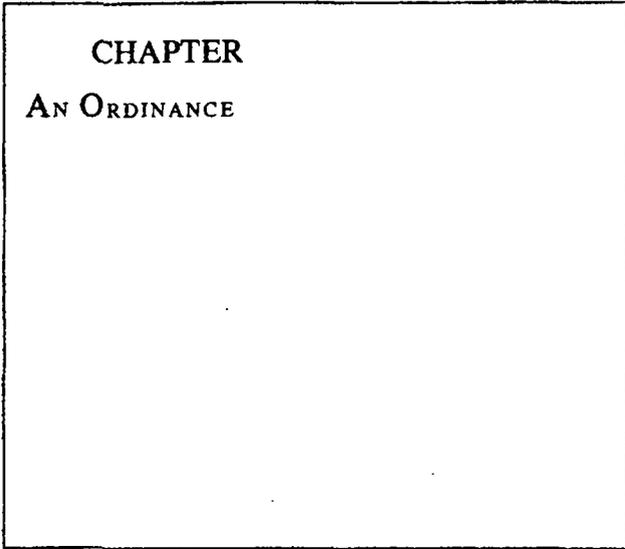
Section 1. Lending and deposit specifications required.

With each bid for interest upon city and school funds, the controller shall obtain, in a form prescribed by him from each bidder, the lending and deposit information for its home office and for each branch office or facility information that shall include, but is not limited to, the following:

- (a) the affidavit required under Section 2;
- (b) the number of high cost loans made by the lender and its affiliates;
- (c) the market share ratio of the lender's refinance loans in minority census tracts in Providence to nonminority census tracts in Providence;

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CITY CLERK

CHAPTER  
AN ORDINANCE



IN CITY COUNCIL

**JAN 5 2006**

FIRST READING  
REFERRED TO COMMITTEE ON  
ORDINANCES

*Claire P. Bostwick*  
*Deputy* CLERK CB

THE COMMITTEE ON

Ordinances

Recommends

*John M. Steen*

CLERK

1-26-06 - Con't.  
4-18-06 - Cont - New Ord. Substituted

THE COMMITTEE ON  
ORDINANCES  
Approves Passage of  
The Within Ordinance

*John M. Steen*

CLERK

5-9-06

Councilman Segal, Council President Lombardi, Councilman Aponte, DeLuca, Iglizzi, Luna,  
& Councilwoman Williams.

- (d) the market share ratio of the lender's refinance loans in low and moderate income census tracts in Providence to middle and upper income census tracts.
- (e) Ratios of high cost loans shall be broken out separately; and considering each lender and affiliate separately in the calculations.

Section 2. Predatory lenders: city depository, definitions.

(a) No bidding bank or savings and loan association may be designated as a city depository if it or any of its affiliates is a predatory lender. Every bidding bank and loan association shall, prior to any such designation, submit to the City an affidavit certifying that neither it, nor any of its affiliates, is a predatory lender. The affidavit shall be in a form prescribed by the Director of Finance and shall be sworn by one or more of the officers of the bank or loan association.

(b) As used in this Section:

"Affiliate" means any entity that controls, is controlled by, or is under common control with another entity.

"Flipping" means the refinancing, and charging of additional points, charges or other costs, on any loan secured by residential real estate within a two year period after the original loan was made, unless the refinancing results in a demonstrable net economic benefit to the borrower.

"High-cost loan" means a loan entered into after the effective date of this section, where:

- (1) at the time of the loan's origination, the annual percentage rate of the loan exceeds by 5 or more percentage points the yield on United States securities having comparable periods of maturity to the loan's maturity, measured as of the 15th day of each month; or
- (2) the total points and fees exceed 4% of the total loan amount.

"Points and fees" means:

- (1) All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

(2) All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees";

(3) All compensation paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table funded transaction, not otherwise included in sub-section (1) or (2), above;

"Points and fees" shall not include: (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing or satisfying a security interest; and (ii) bona fide and reasonable fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for home inspections performed prior to closing; credit reports; surveys; attorney's fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-section (1) of this sub-section; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

"Predatory lender" means a business entity that has made, within the previous 24 month period, predatory loans that comprise either:

- (1) 5% of the total annual number of loans made; or
- (2) 25 individual loans; whichever is less.

Each lender and affiliate shall be considered separately for the purposes of these calculations, and only loans secured by residential real estate that is located within the City of Providence shall be considered. The term "predatory lender" shall not include a business entity that has demonstrated to the satisfaction of the Director of Finance that it has discontinued the practice of making predatory loans and has taken steps to ensure that it does not make such loans in the future.

"Predatory loan" means a high-cost loan that is secured by residential real estate that is located within the City, including but not limited to home purchase, home refinance and home equity loans, that the Director of Finance has determined was made under circumstances that are abusive, based upon the factors set forth in this paragraph. The circumstances upon which the Director of Finance shall base his or her determination shall include unfair or abusive loan terms, unscrupulous and misleading marketing, high pressure lending tactics that limit information or choices available to a consumer, or any combination thereof. Practices that indicate that a loan was made under abusive circumstances shall include, but are not limited to, the following:

- (1) Fraudulent, high-pressure and misleading marketing and sales efforts to sell high cost loans;
- (2) Excessive fees and exorbitant interest rates that are well beyond the levels appropriate or necessary to cover risk and a profitable return;
- (3) The financing of those excessive origination fees as well as fees for excessively priced or unnecessary products into high cost loans;
- (4) Prepayment penalties that force borrowers to keep an unfavorable or unaffordable high cost loan;
- (5) Short-term balloon payments which often force refinancing into another high cost loan and may prompt foreclosure;
- (6) Loan flipping;
- (7) The stripping of equity out of the home through financing high fees, frequent refinancing of high cost loans or through artificially reducing monthly payments through negative amortization;
- (8) The financing of any credit life, credit disability, credit unemployment, or any other life or health insurance, directly or indirectly, into one or more high cost loans;
- (9) The extension of credit based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment, and without regard to the availability of lower cost alternative financing options;

(10) The payment by a lender to a contractor under a home repair or improvement contract from loan proceeds, unless the payment (i) is in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or (ii) is by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the lender, and the contractor before the date of payment; and

(11) The payment by a lender to a contractor under a home repair or improvement contract from loan proceeds, where the contractor has been, on two or more occasions within the previous 24 month period, found by a court or the department of business regulation to be in violation of any law or ordinance prohibiting deceptive practices or similar conduct.

Section 3. Predatory lenders: city contracts.

(a) No person or business entity shall be awarded a contract with the City if the person or business entity, or any of its affiliates is a predatory lender. Every person or business entity seeking to do business with the City shall submit to the City an affidavit certifying that neither it, nor any of its affiliates, is a predatory lender. The affidavit shall be in a form prescribed by the Director of Finance and shall be sworn by the person or one or more of the officers or owners of the business entity, as the case may be. Nothing in this section shall affect the validity of any contract entered into in connection with any debt obligations issued by or on behalf of the City, regardless of whether the contract is awarded in compliance with this Section. Any other contract awarded in violation of this Section shall be voidable at the option of the City. For purposes of this Section, "predatory lender" and "affiliations" shall have the meaning ascribed to the terms in Section 2.

(b) The purchasing agent may suspend the ineligibility of a person or business entity in order to allow execution of a contract with the person or entity, upon written application by the head of a city agency or department affected by the proposed contract, setting forth facts sufficient in the judgment of the purchasing agent to establish: (i) that the public health, safety or welfare of the city requires the goods or services of the person or business entity; and (ii) that the city is unable to acquire the goods or services at comparable price and quality, and in sufficient quantity from other sources.

Section 4. Severability.

If any provision of this ordinance is held invalid, such provision shall be deemed excised from this ordinance and the invalidity thereof shall not affect any of the other provisions of this ordinance. If the application of any provision of this ordinance to any person or circumstance is held invalid, it shall not affect the application of such provision to other persons or circumstances.

SECTION 2. This ordinance shall take effect 30 days after its passage and approval.

**IN CITY COUNCIL**  
MAY 18 2006  
FIRST READING  
READ AND PASSED  
*Adam M. Stele* CLERK

**IN CITY COUNCIL**  
JUN 1 2006  
FINAL READING  
READ AND PASSED  
*[Signature]* PRESIDENT  
*Adam M. Stele* CLERK

**APPROVED**  
*[Signature]*  
**MAYOR** 6/12/06



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 mortgage broker in connection with a home loan.

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

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

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

26 (j) "Director" means the director of the department of business regulation.

27 (k) "Excluded points and fees" means, in connection with a home loan, up to and  
28 including one percent (1%) of the total loan amount attributable to bona fide fees paid to a federal  
29 or state government agency that insures payment of some portion of a home loan plus an amount  
30 not to exceed two percent (2%) of the total loan amount attributable to bona fide discount points  
31 or a conventional prepayment penalty. In no case shall the total excluded points and fees in  
32 connection with a home loan exceed three percent (3%) of the total loan amount.

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

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

3           (1) A mortgage or deed of trust on real estate in this state upon which there is located or  
4 there is to be located a structure or structures designed principally for occupancy of from one to  
5 four (4) families which is or will be occupied by a borrower as the borrower's principal dwelling;  
6 or

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

9           (n) "Loan originator" means any person who acts as a mortgage broker as defined in  
10 subsection (o) of this section who performs mortgage broker activities; or any person who is  
11 retained as an independent contractor by a mortgage broker, or represents a mortgage broker, in  
12 the performance of a mortgage broker activities.

13           (o) "Mortgage broker" means a person (not an employee or exclusive agent of a lender)  
14 who brings a borrower and lender together to obtain a federally related mortgage loan asset forth  
15 in 24 C.F.R. 3500.2

16           (p) "Points and fees" means:

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

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

20           (3) All compensation paid directly or indirectly to a mortgage broker from any source,  
21 including a mortgage broker that originates a loan in its own name in a table-funded transaction;

22           (4) 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           (5) The maximum prepayment fees and penalties that may be charged or collected under  
29 the terms of the loan documents; and

30           (6) 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           (7) 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 (8) Points and fees shall not include:

4 (i) Taxes, filing fees, recording and other charges and fees paid or to be paid to public  
5 officials for determining the existence of or for perfecting, releasing or satisfying a security  
6 interest; or

7 (ii) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of  
8 the creditor for the following: fees for tax payment services; fees for flood certification; fees for  
9 pest infestation and flood determination; appraisal fees; fees for inspections performed prior to  
10 closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney  
11 from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included  
12 under subparagraph (1) of this paragraph; title insurance premiums; and fire and hazard insurance  
13 and flood insurance premiums, provided that the conditions in 12 C.F.R. 226.4(d)(2) are met.

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

16 (r) "Threshold" means any one of the following three (3) items, as defined:

17 (1) "Rate threshold" means:

18 (i) for a first lien mortgage home loan, an interest rate equal to eight (8) percentage points  
19 over the weekly average yield on comparable United States treasury securities on the fifteenth  
20 (15<sup>th</sup>) day of the month immediately preceding the month in which the loan is made; and

21 (ii) for a subordinate mortgage lien, an interest rate equal to nine (9) percentage points  
22 over the weekly average yield on comparable United States treasury securities on the fifteenth  
23 (15<sup>th</sup>) day of the month immediately preceding the month in which the loan is made;

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

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

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

31 (s) "Total loan amount" means the principal of the loan minus those points and fees as  
32 defined in subsection (p) of this section that are included in the principal amount of the loan. For  
33 open-end loans, the total loan amount shall be calculated using the total line of credit allowed  
34 under the home loan at closing.

1           **34-25.2-5. Prohibited acts and practices regarding home loans. – A home loan shall**  
2 **be subject to the following prohibited acts and practices.**

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

8           **(b) No creditor shall knowingly or intentionally engage in the unfair act or practice of**  
9 **flipping a home loan. "Flipping a home loan" is the making of a home loan to a borrower that**  
10 **refinances an existing home loan when the new loan does not have reasonable, tangible net**  
11 **benefit to the borrower considering all of the circumstances, including, but not limited to, the**  
12 **terms of both the new and refinanced loans, the cost of the new loan, and the borrower's**  
13 **circumstances.**

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

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

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

25           **34-25.2-6. Limitations and prohibited practices regarding high-cost home loans. -- A**  
26 **high-cost home loan shall be subject to the following additional limitations and prohibited**  
27 **practices:**

28           **(a) In connection with a high-cost home loan, no creditor shall directly or indirectly**  
29 **finance any points or fees.**

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

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

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

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

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

11           (g) A creditor may not make a high-cost home loan without first receiving certification  
12 from a counselor with a third-party nonprofit organization approved by the United States  
13 Department of Housing and Urban Development, or qualified housing financing agency of this  
14 state that the borrower has received counseling on the advisability of the loan transaction.

15           (h) A high-cost home loan shall not be extended to a borrower unless a reasonable  
16 creditor would believe at the time the loan is closed that the borrower residing in the home will be  
17 able to make the scheduled payments associated with the loan based upon a consideration of his  
18 or her current and expected income, current obligations, employment status, and other financial  
19 resources, other than the borrower's equity in the collateral that secures the repayment of the loan.  
20 There is a rebuttable presumption that the borrower residing in the home is able to make the  
21 scheduled payments to repay the obligation if, at the time the loan is consummated, said  
22 borrower's total monthly debts, including amounts under the loan, do not exceed forty percent  
23 (40%) of said borrower's monthly gross income as verified by tax returns, payroll receipts, and  
24 other third-party income verification.

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

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

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

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

1 cost home loan.

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

7 34-25.2-7. Default – Notice – Right to cure. – (a) If a creditor asserts that grounds for  
8 acceleration exist and requires the payment in full of all sums secured by the security instrument,  
9 the borrower, or anyone authorized to act on the borrower's behalf, shall have the right at any  
10 time, up to the time title is transferred by means of foreclosure by judicial proceeding and sale or  
11 otherwise, to cure the default and reinstate the home loan by rendering the amount or  
12 performance as specified in section 6 of this chapter. Cure of default as provided herein shall  
13 reinstale the borrower to the same position as if the default had not occurred and shall nullify, as  
14 of the date of the cure, any acceleration of any obligation under the security instrument or note  
15 arising from the default.

16 (b) Before any action filed to foreclose upon the home or other action is taken to seize or  
17 transfer ownership of the home, a notice of the right to cure the default must be delivered to the  
18 borrower informing the borrower of the following:

19 (1) the nature of default claimed on the home loan, and of the borrower's right to cure the  
20 default by paying the sum of money required to cure the default; provided, that a partial payment  
21 made or rendered in response to said notice must be accepted. If the amount necessary to cure the  
22 default will change during the period after the effective date of the notice, due to the application  
23 of a daily interest rate or the addition of late fees, the notice shall give sufficient information to  
24 enable the borrower to calculate the amount at any point during the period set forth in subsection  
25 2 of this section;

26 (2) the date by which the borrower shall cure the default to avoid acceleration and  
27 initiation of foreclosure, or other action to seize the home, which date shall not be less than thirty  
28 (30) days after the date the notice is effective, and the name and address and phone number of a  
29 person to whom the payment or tender shall be made;

30 (3) that if the borrower does not cure the default by the date specified, the creditor may  
31 take steps to terminate the borrower's ownership in the property by requiring payment in full of  
32 the home loan and commencing a foreclosure proceedings or other action to seize the home; and

33 (4) the name and address of the creditor and the telephone number of a representative of  
34 the creditor whom the borrower may contact if the borrower disagrees with the creditor's

1 assertion that a default has occurred or the correctness of the creditor's calculation of the amount  
2 required to cure the default.

3 (c) To cure a default under this section, a borrower shall not be required to pay any  
4 charge, fee or penalty attributable to the exercise of the right to cure a default as provided for in  
5 this section, other than the fees specifically allowed by this section. The borrower shall not be  
6 liable for any attorney fees relating to the borrower's default that are incurred by the creditor prior  
7 to or during the thirty (30) day period set forth in subdivision (b)(2) of this section. After the  
8 creditor files a foreclosure action or takes other action to seize or transfer ownership of the home,  
9 the borrower shall only be liable for attorney fees that are reasonable and actually incurred by the  
10 creditor, based on a reasonable hourly rate and a reasonable number of hours.

11 (d) If a default is cured after the initiation of any action to foreclose, the creditor shall  
12 take such steps as are necessary to terminate the foreclosure proceeding or other action.

13 **34-25.2-8. Assignee liability.** – (a) Any person who purchases or is otherwise assigned a  
14 high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the  
15 loan that the borrower could assert against the original creditor of the loan; provided, that this  
16 subsection (a) shall not apply if the purchaser or assignee demonstrates by a preponderance of the  
17 evidence that it:

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

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

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

30 (b) Limited to amounts required to reduce or extinguish the borrower's liability under the  
31 home loan plus amounts required to recover costs, including reasonable attorneys' fees, a  
32 borrower acting only in an individual capacity may assert claims that the borrower could assert  
33 against a creditor of the home loan against any subsequent holder or assignee of the home loan as  
34 follows:

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

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

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

13           34-25.2-9. Civil action. – (a) Any person found by a preponderance of the evidence to  
14 have violated any provision of this act shall be liable to the borrower for the following:

15           (1) actual damages, including consequential and incidental damages;

16           (2) for violations of section 5 or section 6 of this act, statutory damages equal to two (2)  
17 times the finance charge paid under the loan and forfeiture of the remaining interest under the  
18 loan;

19           (3) punitive damages, when the violation was proven to be malicious or reckless; and

20           (4) costs including reasonable attorneys' fees.

21           (b) A borrower may be granted injunctive, declaratory and such other equitable relief as  
22 the court deems appropriate in an action to enforce compliance with this act.

23           (c) The right of rescission granted under 15 U.S.C. 1601 et seq. for a violation of that law  
24 shall be available to a borrower by way of recoupment against a party foreclosing on the home  
25 loan or collecting on the loan, at any time during the term of the loan. Nothing in this act shall be  
26 construed to limit recoupment rights available to the borrower under any other law.

27           (d) The remedies provided in this section are not intended to be the exclusive remedies  
28 available to a borrower nor must the borrower exhaust any administrative remedies provided  
29 under this act or any other applicable law before proceeding under this section.

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

33           (1) within thirty (30) days of the loan closing, and prior to receiving any notice of the  
34 compliance failure, the creditor has made appropriate restitution to the borrower, and appropriate

1 adjustments are made to the loan; or

2 (2) within sixty (60) days of the loan closing and prior to receiving any notice of the  
3 compliance failure, and the compliance failure was not intentional and resulted from a bona fide  
4 error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the  
5 borrower is notified of the compliance failure, appropriate restitution is made to the borrower, and  
6 appropriate adjustments are made to the loan. Examples of a bona fide error include clerical,  
7 calculation, computer malfunction and programming, and printing errors. An error of legal  
8 judgment with respect to a person's obligations under this section is not a bona fide error.

9 (f) The remedies provided herein are cumulative.

10 **34-25.2-10. Subterfuge prohibited.** – It shall be a violation of this chapter for any  
11 person to attempt in bad faith to avoid the application of this chapter by:

12 (a) Dividing any loan transaction into separate parts;

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

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

18 **34-25.2-11. Department of business regulation -- Enforcement.** – The department of  
19 business regulation shall have jurisdiction to enforce the provisions of this chapter through their  
20 general regulatory powers and through civil process. The director or director's designee shall  
21 promulgate regulations as necessary to carry out the provisions of this chapter.

22 **34-25.2-12. Rights in addition to other laws.** – The rights conferred by this chapter are  
23 independent of and in addition to any other rights under other laws.

24 **34-25.2-13. Severability.** – If any provision of this chapter or the application of this  
25 chapter to any person or circumstances is held invalid or unconstitutional, the invalidity or  
26 unconstitutionality shall not affect other provisions or applications of this chapter which can be  
27 given effect without the invalid or unconstitutional provision or application, and to this end, the  
28 provisions of this chapter are declared to be severable.

29 **34-25.2-14. Liberal construction.** – This chapter shall be construed liberally in aid of its  
30 declared purpose of protecting the homes and the equity of individual borrowers in this state.

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

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

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- 1           This act would establish a home loan protection act to protect borrowers from predatory
- 2   lending practices.
- 3           This act would take effect upon passage.

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