CHAPTER 4

Reverse Mortgages

**SECTION 29‑4‑10.** Short Title.

 This chapter may be cited as the South Carolina Reverse Mortgage Act.

HISTORY: 1994 Act No. 376, Section 1.

Library References

Consumer Protection 6.

Mortgages 75.5, 211.

Westlaw Topic Nos. 266, 92H.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 29 to 31, 33 to 39, 60 to 65.

C.J.S. Mortgages Sections 274 to 276.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:2, Alternative Mortgage Transactions.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:41, Miscellaneous.

**SECTION 29‑4‑20.** Reverse Mortgage defined.

 As used in this chapter “reverse mortgage” means a nonrecourse loan secured by real property which:

 (1) provides cash advances to a borrower based on the equity or future appreciation in value in a borrower’s owner‑occupied principal residence;

 (2) requires no payment of principal or interest until the entire loan becomes due and payable; and

 (3) is made by a lender authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States or of South Carolina, or a mortgage lender licensed pursuant to Chapter 22, Title 37.

HISTORY: 1994 Act No. 376, Section 1; 2009 Act No. 67, Section 4.I, eff January 1, 2010.

Effect of Amendment

The 2009 amendment, in item (1), added “or future appreciation in value”; and, in item (3), substituted “a mortgage lender licensed pursuant to Chapter 22, Title 37” for “authorized seller‑servicers selling mortgage loans to the Federal National Mortgage Association or to the Federal Home Loan Mortgage Corporation,”.

Library References

Mortgages 75.5, 211.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 274 to 276.

**SECTION 29‑4‑30.** Rules governing reverse mortgage loans.

 Reverse mortgage loans are governed by these rules, without regard to the requirements set out elsewhere for other types of mortgage transactions:

 (1) Payment in whole or in part is permitted without penalty at any time during the period of the loan.

 (2) An advance made under a reverse mortgage and interest on the advances have priority over a lien filed after the closing of a reverse mortgage and after the filing of the lien.

 (3) A reverse mortgage may provide for an interest rate which is fixed or adjustable and may also provide for interest that is contingent on the value of the property including appreciation at loan maturity.

 (4) If a reverse mortgage provides for periodic advances to a borrower, the advances may not be reduced in amount or number based on an adjustment in the interest rate.

 (5) For purposes of default under this chapter:

 (a) A lender defaults in its obligation to make loan advances when after having received written notification from the borrower that an advance has not been received within fifteen days of its due date, the lender fails to cure the default within fifteen days of receiving the notification. Upon default the lender forfeits all future rights to collect interest. A lender avoids the forfeiture of interest if the lender can show a good faith effort to comply with its obligations under the terms of the loan documents.

 (b) If a default is not cured in accordance with subitem (a), the borrower may file a complaint with the Department of Consumer Affairs and the lender must respond to any inquiry made by the Department of Consumer Affairs.

 (c) Upon wilful default by a lender which results in forfeiture of interest under this item, the Department of Consumer Affairs is authorized to take action necessary to protect the interests of the borrower including bringing an action in circuit court for enforcement of the contract.

 (6) The recordation tax on reverse mortgages may not exceed the actual cost of recording the mortgage.

 (7) The mortgage only may become due and payable upon the occurrence of one of the following:

 (a) the home securing the loan is sold;

 (b) all borrowers cease occupying the home as a principal residence;

 (c) any fixed maturity date agreed to by the lender and the borrower is reached; or

 (d) an event occurs which is specified in the loan documents and which jeopardizes the lender’s security.

 (8) The repayment requirement is also expressly subject to the following additional conditions:

 (a) temporary absences from the home not exceeding sixty consecutive days do not cause the mortgage to become due and payable;

 (b) temporary absences from the home exceeding sixty consecutive days but less than one year do not cause the mortgage to become due and payable so long as the borrower has taken prior action which secures the home in a manner satisfactory to the lender;

 (c) the lender’s right to collect reverse mortgage proceeds is subject to the applicable statute of limitations for loan contracts. Notwithstanding the applicable statute of limitations for loan contracts, the statute of limitations commences on the date that the mortgage becomes due and payable;

 (d) the lender must prominently disclose any interest or other fees to be charged during the period that commences on the date that the mortgage becomes due and payable and ends when repayment in full is made.

HISTORY: 1994 Act No. 376, Section 1.

Library References

Consumer Protection 6.

Mortgages 75.5, 211.

Westlaw Topic Nos. 266, 92H.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 29 to 31, 33 to 39, 60 to 65.

C.J.S. Mortgages Sections 274 to 276.

**SECTION 29‑4‑40.** Reverse mortgage loans authorized without regard to certain provisions for other types of mortgage transactions.

 Reverse mortgage loans may be made or acquired without regard to the following provisions for other types of mortgage transactions:

 (1) limitations on the purpose and use of future advances or any other mortgage proceeds;

 (2) limitations on future advances to a term of years, or limitations on the term of credit line advances;

 (3) limitations on the term during which future advances take priority over intervening advances;

 (4) requirements that a maximum mortgage amount be stated in the mortgage;

 (5) limitations on loan‑to‑value ratios;

 (6) prohibitions on balloon payments;

 (7) prohibitions on compounded interest and interest on interest;

 (8) interest rate limits under the usury statutes; and

 (9) requirements that a percentage of the loan proceeds must be advanced prior to loan assignment.

HISTORY: 1994 Act No. 376, Section 1.

Library References

Mortgages 75.5, 211.

Westlaw Topic No. 266.

C.J.S. Mortgages Sections 274 to 276.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:2, Alternative Mortgage Transactions.

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:41, Miscellaneous.

**SECTION 29‑4‑50.** Treatment of loan payments and undisbursed funds for purposes of means‑tested programs.

 (A) Reverse mortgage loan payments made to a borrower must be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means‑tested programs of aid to individuals.

 (B) Undisbursed funds must be treated as equity in a borrower’s home and not as proceeds from a loan for the purpose of determining eligibility and benefits under means‑tested programs of aid to individuals.

 (C) This section applies to any law relating to payments, allowances, benefits, or services provided on a means‑tested basis by this State including, but not limited to, supplemental security income, low‑income energy assistance, property tax relief, medical assistance, and general assistance.

HISTORY: 1994 Act No. 376, Section 1.

Library References

Social Security and Public Welfare 4.12.

Westlaw Topic No. 356A.

C.J.S. Social Security and Public Welfare Sections 28 to 33, 52 to 53.

**SECTION 29‑4‑60.** Independent information and counseling services.

 (A) No lender authorized by this chapter to make reverse mortgages may accept an application for a reverse mortgage until the lender has obtained from the South Carolina State Housing Finance and Development Authority the content and format of a statement regarding the advisability and availability of independent information and counseling services on reverse mortgages that must be provided by the lender to the borrower pursuant to subsection (B).

 (B) No reverse mortgage commitment may be made by a lender unless the loan applicant attests in writing that the applicant received from the lender at the time of initial inquiry the statement provided for in subsection (A).

 (C) The Housing Finance and Development Authority shall:

 (1) develop and make available to lenders the content and format of the statement described in subsection (A);

 (2) refer consumers to independent counseling services with expertise in reverse mortgages.

 (D) The Office of the Governor, Division on Aging shall provide independent consumer information on reverse mortgages and their alternatives.”

HISTORY: 1994 Act No. 376, Section 1.

Library References

Consumer Protection 6.

Westlaw Topic No. 92H.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 29 to 31, 33 to 39, 60 to 65.

RESEARCH REFERENCES

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:41, Miscellaneous.