

SENATE NO. 647

AN ACT RELATIVE TO CREDIT UNION MORTGAGES

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 171 of the General Laws, as appearing in the 2004 Official Edition, is
2 hereby amended by striking out Section 65 and inserting in place thereof the following section:-

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4 Section 65. The following words as used in this section, unless the context otherwise requires,
5 shall have the following meanings:--

6 a) "Real estate", land or property, including improved land with a dwelling, owner occupied or
7 unoccupied dwellings, unimproved land, farmland, a unit of a condominium, shares of stock
8 issued by a co-operative housing corporation, leasehold interests under a lease which does
9 not expire for at least five years beyond the maturity date of the loan, leasehold interests
10 created in air rights over land, and any other interest in land.

11 b) "Mortgage loan", a loan, line of credit, or borrowing secured primarily by a lien on an
12 interest in real estate. The following categories of mortgage loans are specifically
13 authorized by this section:

14 (1) Residential mortgage loans secured by a first mortgage lien on a dwelling with four or less
15 separate households and occupied or to be occupied by the borrower;

- 16 (2) Residential mortgage loans secured by a subordinate mortgage lien on a dwelling with four
17 or less separate households and occupied or to be occupied by the borrower including home
18 improvement loans, home equity lines of credit and second mortgage loans;
- 19 (3) Mortgage loans secured by a lien on real estate held or used for investment, governmental,
20 nonprofit or other purposes;
- 21 (4) Land loans;
- 22 (5) Construction loans to improve real estate with improvements, structures, or projects for
23 residential, investment, governmental or non-profit use and purposes related to incident
24 thereto including infrastructure or development;
- 25 (6) Mortgage loans secured by a lien on real estate saleable in the secondary market or
26 underwritten in accordance with mortgage loan programs of public instrumentalities created
27 by the commonwealth or the federal government for the purpose of financing and expanding
28 the supply of residence mortgages or affordable housing.
- 29 c) The following loans shall not be deemed mortgage loans for purposes of paragraph (b) but
30 shall be treated as loans pursuant to paragraph (d):
- 31 Loans for which a lien on or interest in real estate is taken as additional collateral
32 through an abundance of caution, including loans pursuant to which the credit union
33 takes a blanket lien on all or substantially all of the assets of the borrower, and the value
34 of the real estate is low relative to the aggregate value of all collateral.
- 35 d) The term “loan” means any loan, or line of credit, whether secured by collateral or security of
36 any nature or unsecured, for consumer or other purposes, other than a real estate loan.
- 37 e) Extensions of credit under paragraphs (a) through (d) of this section may contain any such
38 agreed to terms and conditions including, but not limited to, those governing the payment of

39 principal and interest, collateral, maximum loan-to-value ratios, maximum debt-to-income
40 ratios, aggregate amounts, amortization, prepayment, loan servicing and the apportionment of
41 taxes, betterment assessments and insurance of any kind applicable to the loan, subject to any
42 limitations imposed by this chapter or other provisions of law. A credit union also may
43 subsequently revise or modify any such terms or conditions subject to agreement of the parties.

44 f) Notwithstanding the provisions of paragraphs (a) through (e), reverse mortgage loans and
45 adjustable rate mortgage loans on owner occupied dwellings shall be subject to the provisions of
46 section 4 and 5 respectively.

47 g) The commissioner may by directive, guideline or regulation, carry out the purposes of this
48 section and to further define the terms used in this section to promote safe and sound banking
49 practices.

50 1. Credit unions may make or acquire loans and mortgage loans as specified in this section.

51 A credit union may also subsequently revise or modify any terms or conditions of such loans
52 subject to agreement of the parties.

53 2. Each credit union shall adopt and maintain comprehensive written loan policies that
54 establish appropriate limits and standards for extensions of credit made pursuant to this section
55 that are consistent with safe and sound banking practices and are appropriate to the size, nature
56 and scope of the credit union's operations.

57 (a) Such loan policies shall establish prudent loan underwriting standards that clearly and
58 measurably address, at a minimum: (1) maximum loan-to-value, loan amount, aggregate
59 amounts, loan maturities, and debt-to-income requirements; (2) collateral and appraisal
60 requirements; (3) application and loan approval requirements; and (4) loan

61 administration procedures. Such written loan policies shall be reviewed and approved
62 annually by the credit union's board of directors.

63 (b) The commissioner may by directive, guideline or regulation, establish additional
64 minimum safe and sound lending requirements.

65 3. A credit union shall inspect the real estate securing a loan in the event that a payment of
66 interest or principal upon any such loan or on account of real estate taxes upon the parcel
67 mortgaged to secure the same shall be in default. Inspection for the purpose aforesaid shall
68 be made within ninety-one days from the date of such default in payment of interest or
69 principal or within one hundred and eighty-one days from the date of such default in
70 payment on account of taxes, as the case may be, and thereafter periodic inspection shall
71 continue in accordance with the foregoing provision of this clause until such loan shall no
72 longer be in default.

73 4. The commissioner may cause an appraisal of real estate to be made at the expense of the
74 credit union whenever the commissioner deems an excessive loan has been made or is about
75 to be made upon real estate.

76 5. A credit union may make or acquire a reverse mortgage loan, pursuant to the provisions of
77 any program for reverse mortgage loans which has been submitted to and approved by the
78 commissioner, to the owner of real estate improved with a dwelling designed to be occupied
79 by not more than four families; provided, however, that each such owner shall be at least
80 sixty years of age and shall occupy the mortgaged real estate in whole or in part; and
81 provided further, that a person shall be deemed to be the owner of real estate
82 notwithstanding that legal title thereto is held in the name of a trust if said person is the
83 beneficiary of such trust.

- 84 a) For the purposes of this section, a reverse mortgage loan shall not be considered a
85 residential mortgage transaction, as defined in section 1 of chapter 140D or any other
86 transaction specified in subsection (e) of section 10 of said chapter 140D. The notices
87 and rights contained herein shall be in addition to the disclosure and rights provided for
88 in said chapter 140D, including the right of rescission set forth in said section 10 of said
89 chapter 140D.
- 90 b) The proceeds from a reverse mortgage loan shall be disbursed to the borrower, pursuant
91 to the provisions of such program, and together with unpaid interest, if any, shall
92 become due and payable (i) at the end of a fixed term, if any; (ii) upon the death of the
93 borrower; (iii) upon the conveyance of title to the mortgaged real estate; (iv) upon such
94 borrower ceasing to occupy such real estate as a principal dwelling; or (v) upon default
95 by the borrower in the performance of its obligations under the loan agreement.
- 96 c) The commissioner shall not approve any program for reverse mortgage loans which does
97 not include the following:
- 98 (1) the type of loan, whether open-end or closed and whether a recourse or non recourse
99 loan;
- 100 (2) an applicant for any such loan shall not be bound for seven days after his acceptance, in
101 writing, of the lender's written commitment to make the loan;
- 102 (3) the credit union shall obtain a written statement signed by the borrower acknowledging
103 receipt of disclosure of all contractual contingencies which could force a sale of the
104 mortgaged real estate;
- 105 (4) a provision permitting prepayment of the loan without penalty at any time prior to said
106 loan becoming due and payable;

- 107 (5) the interest rate, which may be fixed or variable, and the method of calculation thereof
108 shall be established at loan origination; quote and, at the option of the borrower, may be
109 contingent on the value of the mortgaged real estate at closing or at maturity or on
110 changes in said value during the period between closing and maturity;
- 111 (6) the method of disbursement of the proceeds of the loan to the borrower; provided,
112 however, that at the request of the borrower, disbursement may be made to a third party
113 pursuant to the terms of the loan agreement;
- 114 (7) a copy of the form of the note and mortgage deed that will be utilized for such loans;
- 115 (8) a detailed description of how the plan will function; and
- 116 (9) such other information as the commissioner may require.
- 117 d) Prior to making any such loan, a credit union shall provide a prospective borrower with
118 written materials explaining in plain language, the type of mortgage being offered and its
119 specific terms, including but not limited to:
- 120 (1) a schedule, if applicable, and explanation of payments to the borrower pursuant to the
121 terms of the mortgage agreement and whether or not property taxes and insurance
122 premiums are to be deducted:
- 123 (2) a schedule of outstanding debt over time, if applicable;
- 124 (3) repayment date, if a fixed term loan, and other provisions which cause the loan to
125 become due and payable;
- 126 (4) method of repayment and schedule, if any;
- 127 (5) all contractual contingencies, including lack of home maintenance and other default
128 provisions which may result in a forced sale of the mortgaged property;

- 129 (6) interest rate and annual percentage rate, and for a reverse mortgage loan for a specified
130 term, total interest payable thereon;
- 131 (7) loan fees and charges;
- 132 (8) description of prepayment and, if applicable, refinancing features; and
- 133 (9) inclusion of a statement that any such mortgage has tax and estate planning
134 consequences and may affect levels of, or eligibility for, certain government benefits,
135 grants or pensions, and that applicants are advised to explore such matters with
136 appropriate authorities.
- 137 e) A credit union shall not make a reverse mortgage loan as provided in this section until it
138 has received a notice, in writing, that the prospective borrower has completed a reverse
139 mortgage counseling program which has been approved by the executive office of elder
140 affairs and which shall include instruction on reverse mortgage loans. Any such
141 program shall include, but is not limited to, the subject matter of subparagraphs (1) to
142 (9), inclusive, with respect to all reverse mortgage loan programs approved by the
143 commissioner pursuant to this section. For the purpose of providing such counseling,
144 said executive office of elder affairs shall establish and maintain a list of counseling
145 programs approved by it and shall make such list available to all credit unions and to the
146 public.
- 147 f) A reverse mortgage loan shall constitute a lien against the property securing the loan to
148 the extent of all advances made pursuant to the reverse mortgage and all interest accrued
149 on such advances, and the lien shall have priority over any lien filed or recorded after
150 recordation of a reverse mortgage loan. The commissioner may promulgate regulations
151 necessary to carry out the provisions of this paragraph. For the purposes of this

152 paragraph, the term “non-recourse reverse mortgage loan” shall mean a reverse
153 mortgage loan which limits the lender’s recovery solely to the value of the property at
154 the time the loan becomes due and payable. The provisions of sections 96 to 114A,
155 inclusive, of chapter 140 shall not apply to a reverse mortgage loan.

156 6. Any credit union may make or acquire mortgage loans evidenced by a note which provides
157 for variation in the rate of interest over the term of the note; provided, however, that such a
158 loan made to finance or refinance the purchase of and secured by a first lien on a dwelling
159 house of 4 or fewer separate households occupied in whole or in part by the mortgagor shall
160 be subject to but not limited to the following conditions and restrictions imposed by the
161 commissioner:--

- 162 (1) the method by which the rate of interest may be adjusted;
- 163 (2) the frequency with which the rate of interest may be adjusted, provided that successive
164 rate adjustments shall be no less than 6 months apart;
- 165 (3) the maximum increase in the rate of interest allowed for any such adjustment;
- 166 (4) provisions for decreases in the rate of interest as may be warranted by market
167 conditions;
- 168 (5) requirements for advance notification and explanation of adjustments in the rate of
169 interest, provided that such notification and explanation shall occur no less than thirty
170 days prior to such adjustments; and
- 171 (6) methods of disclosure to the mortgagor of the terms and conditions of the loan as
172 required under the provisions of chapter 140 D.

173 Notwithstanding any provision of the law to the contrary, the commissioner may by further
174 conditions and restrictions provide that the rate of amortization may be varied, including
175 utilizing a period of negative amortization, in order to adjust the rate of interest.

176 7. Every credit union, subject to any limitations imposed by this section or other provisions of
177 the General Laws, shall have the following powers and whatever further incidental or
178 complementary powers that may fairly be implied from those expressly conferred and such
179 as are reasonably necessary to enable it to exercise fully those powers according to common
180 customs and usages:

181 (1) To discount, buy, invest in, hold, assign, transfer, sell and negotiate promissory
182 notes, drafts, bills of exchange, mortgages, bonds, debentures, bonds or notes secured by
183 mortgages, installment obligations, and other evidences of debt;

184 (2) To advance money or credits on real estate, on improvements thereto or on personal
185 security, on terms to be agreed upon; and

186 (3) To buy, sell or make loans as participation loans with any other federally-insured
187 credit union, bank or insurance company and to service any loans sold by it.

188 SECTION 2. Chapter 171 of the General Laws, as so appearing, is hereby further amended by
189 striking out Section 66 and inserting in place thereof the following new section:--

190 Section 66. In making mortgage loans on real estate pursuant to section sixty-five, a credit
191 union shall also be subject to the following conditions:

192 1. The person obligated from time to time to make payments under a mortgage, whether as the
193 original borrower or as a subsequent owner of the mortgaged property, shall be or shall
194 become a member of the credit union.

- 195 2. Each loan shall be on real estate situated within the commonwealth or within a radius of one
196 hundred miles of the main office of the credit union without regard to geographical location.
- 197 3. A credit union having assets of not more than one hundred thousand dollars may invest not
198 more than fifty percent of its assets in real estate mortgages. A credit union having assets of
199 more than one hundred thousand dollars may invest not more than seventy percent of its
200 assets in real estate mortgages. A credit union having assets of five hundred thousand
201 dollars or more may invest not more than eighty percent of its assets in real estate
202 mortgages.