

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY  
THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

AMENDMENT TO AN EXISTING RULE: YES \_\_\_ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_  
\_\_\_\_\_

IF NO, SERIES OF NEW RULE BEING PROPOSED: 19

TITLE OF RULE BEING PROPOSED: Rules for Reverse Mortgage Loans  
\_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 157

SECTION § 64-7-1(d), PASSED ON April 20, 1997

THIS RULE IS FILED WITH THE SECRETARY OF STATE, THIS RULE BECOMES EFFECTIVE  
ON THE FOLLOWING DATE: June 2, 1997

  
Authorized Signature

TITLE 106  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF BANKING

SERIES 19  
RULE FOR REVERSE MORTGAGE LOANS

OFFICE OF LEGISLATIVE COUNSEL  
WEST VIRGINIA DIVISION OF BANKING

**§ 106-19-1 General.**

1.1. Scope. - This rule establishes general provisions implementing and supplementing the "Reverse Mortgage Enabling Act," W. Va. Code § 47-24-1, et seq.

1.2. Authority. - W. Va. Code § 47-24-8(b).

1.3. Filing Date. - May 8, 1997

1.4. Effective Date. - June 2, 1997

**§ 106-19-2 Authorization to make reverse mortgage loans.**

2.1. Coverage. - This rule govern the ability of banks, savings institutions, credit unions and their eligible licensed financial affiliates to make or participate in reverse mortgages pursuant to W. Va. Code § 47-24-1 et seq., and in connection therewith, to compound interest.

2.2. Exclusions. - This rule shall not apply to persons making reverse mortgage loans under a program authorized by and under the supervision of a federal governmental agency or federally sponsored mortgage enterprise (e.g., HUD or Fannie Mae) which has been certified by the Commissioner of Banking and otherwise meets the criteria set forth in W. Va. Code § 47-24-8(c).

**§ 106-19-3 Definitions.**

3.1. "Affiliated." - When used in connection with a financial institution, means any company which controls, is controlled by, or is under common control with that financial institution or is the ultimate parent holding company of that financial institution.

3.2. "Authorized Lender" or "Lender" - Means any bank, savings institution, or credit union in West Virginia or any eligible licensed financial affiliate thereof which is approved by the Commissioner of Banking to make reverse mortgages.

3.3. "Mortgagor." - Refers to a tenant who is sixty-two (62) years of age or older, or if the real property is held by tenants by the entirety or by joint tenancy, the youngest of whom is at least sixty-two (62) years of age, who own their own home free and clear or with insubstantial outstanding debt encumbering their real estate.

3.4. "Nonrecourse Loan." - When used in connection with a reverse mortgage loan, means that the only asset of the estate which may be used by the lender to satisfy the loan is the real property securing the loan and any limitation thereon as may be provided for through equity participation. Since by statutory definition in W. Va. Code § 47-24-3, a reverse mortgage is a nonrecourse loan, no deficiency judgment may be sought or granted in any civil action involving a reverse mortgage.

3.5. "Tenure Loan." - Means a loan which has no set term for maturity, but rather is scheduled to become due upon the death of all mortgagor(s) so long as they maintain the secured property as their principal residence.

**§ 106-19-4 Approval for mortgage bankers and other entities to make reverse mortgage loans.**

4.1. Approval Requirements. -- In addition to any other requirements of West Virginia law, authorized lenders must comply with the following requirements before offering reverse mortgage loans.

4.1.a. Every reverse mortgage lender authorized under this rule shall maintain a bond in favor of the Commissioner of Banking in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans then on the lender's books and those expected to be made over the next twelve months or three million dollars (\$3,000,000), whichever is greater. The terms of the bond shall be stated in a manner acceptable to the Commissioner of Banking. The initial term of the bond shall be at least two years; and

4.1.b. The company that provides the bond as required in subdivision 4.1.a of this section may not be affiliated with the lender and shall be authorized to make surety bonds in the state of West Virginia.

4.2. Minimum Capital Requirement. -- The lender shall maintain a minimum capital of five million dollars (\$5,000,000).

4.3. Parent Lender Capital Alternative Requirement. -- A lender may rely on the capital of its parent company or institution to satisfy the requirements of subsection 4.2 of this rule. Provided That for any year in which a lender seeks to rely on the capital of its parent company or institution, it shall provide to the Division of Banking a certified financial statement of the parent company or institution showing a net worth of at least fifty million dollars (\$50,000,000) as of the close of its most recent fiscal year and a binding written commitment from the parent company or institution to the lender to make a minimum of five million dollars (\$5,000,000) available to the lender as a capital contribution in connection with its reverse mortgage lending program.

4.4. Exceptions. - The bonding and minimum capital requirements set forth in subsections 4.1 and 4.2 of this section shall not apply to a lender that:

4.4.a. only originates reverse mortgage loans the proceeds of which are fully disbursed at the loan closing; or

4.4.b. only originates reverse mortgage loans which are structured to provide for the purchase of an annuity with payments made to the mortgagor(s) where:

4.4.b.1. the payments are funded solely by the annuity;

4.4.b.2. the payments commence no more than thirty days after the loan closing; and

4.4.b.3. the reverse mortgage loan principal is comprised only of the cost of the annuity or the payments made to the mortgagor(s) that are funded by the annuity and any financed fees, costs and payments permitted pursuant to section 10 of this rule.

4.5. Application for Authorization-- In addition to the financial requirements set forth in this section, lenders that seek to originate reverse mortgage loans shall apply by letter with return receipt requested together with all required documents to the Commissioner of Banking for authorization to make these loans. In the absence of an adverse notice or a request for supplementary information to the lender by the Division of Banking within sixty days of receipt by the Division of Banking of its letter application and accompanying documents, the lender may commence originating reverse mortgage loans.

This letter application in order to confer valid authorization shall contain the following information and documents as applicable:

4.5.a. the name, address, telephone number, and principal place of business of the lender;

4.5.b. the name of an executive officer responsible for the lender's reverse mortgage loan program;

4.5.c. the basis for any exemptions from the financial requirements set forth in subsections 4.1 and 4.2 of this rule and documentation to support these exemptions;

4.5.d. if no exemption is claimed from subsection 4.1 of this rule, a copy of the bond agreement together with the actual bond;

4.5.e. if no exemption is claimed from subsection 4.2 of this rule, an audited financial statement for the fiscal year most recently ended;

4.5.f. a copy of the report issued by A. M. Best Company for the underwriter of any bond or anticipated annuity;

4.5.g. the designation of the Secretary of State, or where the institution is chartered under federal law, the designation of its primary federal regulatory agency as agent for service of process for any communication concerning a reverse mortgage loan made to a West Virginia resident;

4.5.h. a copy of any trust agreement entered into between the lender and a trustee pursuant to subsection 6.17 of this rule, prior to the trustee holding an annuity which funds any reverse mortgage loan;

4.5.i. the name, address, telephone number, and principal place of business of any trustee and a designation by any trustee of the Secretary of State, or where the trustee institution is chartered under federal law, the designation of its primary federal regulatory agency as agent for service of process for any communication concerning a reverse mortgage loan made to a West Virginia resident; and

4.5.j. any other information and documents as may be requested by the Commissioner of Banking.

**§ 106-19-5 Lending procedures and records retention.**

5.1. Toll-Free Telephone Number. - All lenders must provide a toll-free telephone number and the name of a person to whom applicants and mortgagors may address questions, comments or complaints.

5.2. Books and Records Retention. - All lenders shall maintain their books and records relating to the making of reverse mortgage loans for a six-year period as set forth in W. Va. Code § 31A-4-35 in a manner permitting inspection by the Commissioner of Banking. The Commissioner is authorized to inspect the books and records upon reasonable notice. Lenders shall bear all costs and expenses relating to these inspections.

5.3. Notice of Agent for Service of Process. - The lender shall disclose within the deed of trust its designated agent for service of process in connection with any reverse mortgage loan transaction, together with the agent's address.

5.4. Mortgage Loan Forms. - All lenders shall, upon request, furnish copies of its mortgage loan forms and other documents to the West Virginia division of banking for review.

5.5. Telephone Applications Not Permissible. - No lender shall accept telephone applications. However a lender may solicit and accept inquiries about its products from potential borrowers by telephone.

**§ 106-19-6 Requirements for reverse mortgage loans.**

6.1. Security Instrument. -- The security instrument shall expressly and conspicuously bear a legend identifying the security as a reverse mortgage.

6.2. Single Family Dwelling. -- The reverse mortgage loan shall be secured by a first lien on real property improved by a one-unit single family dwelling that is the residence of the mortgagor(s). The proceeds of a reverse mortgage loan are to be advanced to the mortgagor(s) during the life of the loan in equal installments, in advances through a line of credit or otherwise, in lump sums, or through a combination thereof.

6.3. Comply with Federal Laws. -- All lenders shall comply with all applicable federal laws and regulations, including but not limited to the applicable sections of the Truth in Lending Act (15 USC § 1601 et seq.), the Equal

Credit Opportunity Act (15 USC § 1691 et seq.) and the Real Estate Settlement Procedures Act (12 USC § 2601 et seq.).

6.4. Comply with State Laws. - All lenders must comply with all applicable state laws and regulations, including but not limited to the applicable sections of the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 et seq.

6.5. Application Fee. -- Prior to the closing of a reverse mortgage loan, the only charge a lender may collect from an applicant is an application fee which must be designated as such and which may not be a percentage of the principal amount of the loan, or amount financed. The fee shall be reasonably related to the services to be performed.

6.6. Loan to Value Ratio. -- The maximum loan to value ratio for any loan projected at the time of loan closing shall not exceed eighty percent (80%) of the anticipated value of the property at anticipated loan maturity or at any time prior to the anticipated loan maturity date. The loan to value ratio shall be calculated by dividing the numerator, as defined in subdivision (a) of this subsection, by the denominator, as defined in subdivision (b) of this subsection.

6.6.a. Numerator of the Ratio. -- The numerator of the loan to value ratio shall include: all principal, all accrued loan interest, all fees, costs and payments incurred in connection with the origination of the loan, including but not limited to charges for the purchase of annuities, the payment of real estate taxes and insurance to the extent that an escrow account is established to fund real estate tax and insurance obligations or the lender has committed to advance funds to pay for such taxes and insurance on the property securing the reverse mortgage and any shared appreciation assuming (i) no early prepayment of the reverse mortgage loan, (ii) any loan amounts, such as credit lines and reserve accounts, which may be drawn at the discretion of the mortgagor(s) or by the lender are drawn fully at the earliest opportunity, (iii) the current interest rate if fixed or, if variable, the yearly average of the base index and margin chosen by the lender for the eight year period preceding the loan closing, and (iv) if applicable, a projected appreciation or depreciation rate for home prices which is determined by the same factor as is used in the denominator set forth in subdivision (b) of this subsection.

6.6.b. Denominator of the Ratio. -- The denominator of the loan to value ratio shall be determined by increasing or decreasing the appraised value of the real property, as determined at loan closing by an independent certified or licensed appraiser, by a factor that the

creditor reasonably believes will be the average annual increase or decrease in the value of the real property securing the reverse mortgage loan from the loan closing until the anticipated loan maturity; Provided, however, that this factor shall in no event exceed the average of the yearly changes in the Consumer Price Index for Shelter, as determined by the United States Department of Labor, for the eight years preceding the year in which the loan is made.

6.6.c. *Term Loan.* -- For a term loan, the anticipated loan maturity shall be the date of maturity of the loan. No term loan may have a maturity date of less than ten years.

6.6.d. *Tenure Loan.* -- For a tenure loan, the Commissioner of Banking may, in his or her discretion, review and approve the data and assumptions used to establish the anticipated loan maturity for each reverse mortgage loan.

6.7. *Alternative to Loan to Value Ratio.* -- As an alternative to subsection 6.6 of this rule, the parties may agree that the total obligation of the mortgagor(s) to the lender arising from the reverse mortgage loan shall be no greater than eighty percent (80%) of the actual value of the property at maturity or the amount of the original loan principal at loan closing whichever is greater. The eighty percent (80%) cap is exclusive of any actual losses incurred by the lender as a direct result of a breach of a loan covenant by the mortgagor(s). The difference between the principal and accrued interest and eighty percent (80%) of the actual value of the property at maturity shall be known as "equity participation".

6.8. *Right to Prepay.* -- The mortgagor(s) may prepay any loan without penalty at any time. The payment of any fees or charges, such as a termination fee, that otherwise would be due at maturity without prepayment shall not be considered a penalty.

6.9. *Attachment Prohibition.* -- A lender shall not use or attach any property or asset of the mortgagor except the real property securing the reverse mortgage loan in satisfaction of a reverse mortgage obligation.

6.10. *Late Payment.* -- In the event that a lender fails to make or remit to the mortgagor(s) any payment required under any loan within fifteen (15) days of its due date, the lender shall forfeit the interest that would have been earned on the outstanding loan principal for the entire period during which payments were suspended, ceased or made late, and may be subject to other penalties as provided for in chapter 31A of the West Virginia Code.

6.11. Counseling and Information Services. -- All lenders shall deliver to all applicants a statement prepared by the West Virginia division of banking on the advisability and availability of independent counseling and information services. In addition, no reverse mortgage loan commitment or approval shall be issued by a lender until the applicant presents a written statement that the terms of the reverse mortgage loan have been explained by an attorney, a housing and urban development certified counselor or any other counseling service as indicated on the statement supplied by the West Virginia division of banking.

6.12. Reappraisal Requests. -- At the end of the term of a reverse mortgage loan, the mortgagor(s) may request that the real property securing the loan be reappraised to increase the payments made to the mortgagor(s) or to extend the loan term. The reappraisal may be performed at the lender's sole discretion. In all cases, the lender may require the mortgagor(s) to pay the cost of the reappraisal in advance. In the event the value of the property has increased, the lender may chose to increase the loan payments or extend the loan term where agreed to by the mortgagor(s) subject to the following:

6.12.a. The loan-to-value ratio limitations, as determined pursuant to this rule as of the date on which the increase or extension would begin, shall not be exceeded; and

6.12.b. Any existing insurance coverage shall be increased to insure the additional amounts to be due.

The mortgagor(s) shall execute all documents reasonably requested by the lender and pay all reasonable closing costs associated with the increase in payments or the extension of the loan term provided that the costs have been previously disclosed in writing to the mortgagor(s).

6.13. Reserve Account. -- The lender and the mortgagor(s) may agree in writing to establish a reserve account which may be drawn upon by the mortgagor(s) or the mortgagee to maintain the structural integrity of the real property, to pay real estate taxes or the premium on any required insurance or for any personal expenses of the mortgagor(s). The reserve account may bear interest at a rate that is different from the interest rate on other advances made pursuant to the terms of the reverse mortgage. A lender may only charge interest on advances actually made from the reserve account and not on the entire balance in the reserve account.

6.14. Security Agreement Requirements. -- The security agreement shall include the following:

6.14.a. a list of events which could result in termination of the reverse mortgage loan;

6.14.b. the lender's obligation to notify the mortgagor(s) in writing of any event that could lead to termination of the reverse mortgage loan pursuant to subsection 9.1 and subdivision 9.2.b of this rule; and

6.14.c. the name of a third-party, if any, designated by the mortgagor(s) to whom the lender is obligated to send written notice of any event that could lead to termination of the reverse mortgage loan pursuant to subsection 9.1 and subdivision 9.2.b of this rule.

6.15. Service of Foreclosure Documents. -- The lender shall also provide a copy of all foreclosure documents served on the mortgagor(s) to the third party designated in the security agreement simultaneously with service on the mortgagor(s); or if the mortgagor has not named a third party or if the third party can not be contacted, the lender shall notify in writing the County Clerk of the county where the property is located of its intent to commence foreclosure proceedings.

6.15.a. If a third party has been named but can not be contacted, then the lender shall cause a notice of the foreclosure to be published as a Class II legal advertisement in the county where the property is located, and shall retain in its records an affidavit of posting and proof of publication of the notice.

6.15.b. If repayment is due as a result of the death of the mortgagor(s), then the lender shall provide notice in writing to the heirs, administrator, or executor responsible for the property prior to any foreclosure action. This notice shall state:

6.15.b.1. the amount of the outstanding balance;

6.15.b.2. that the debt must be paid in full within thirty days of the repayment notice to prevent foreclosure proceedings;

6.15.b.3. that the estate may elect to pay the debt in full prior to foreclosure and thereby satisfy the reverse mortgage obligation;

6.15.b.4. that it is the responsibility of the estate, if it so desires, to arrange and pay for an

appraisal of the property prior to sale or foreclosure, and that the only asset of the estate which may be used by the lender to satisfy the loan is the real property securing the loan and any limitation thereon as may be provided for in subsection 6.7 of this rule. The notice shall also state that no deficiency judgment may be sought or granted in any civil action involving a reverse mortgage.

6.16. Interest Accrual. -- Interest shall only accrue from the time monies are advanced to or on behalf of the mortgagor(s). Accrued interest may be added to the loan principal.

6.17. Conditions for Reverse Mortgage Loans that Require Annuity Purchase. -- A reverse mortgage loan which provides for the purchase of an annuity shall comply with the following conditions as applicable:

6.17.a. The company that issues the annuity shall have a rating of excellent or superior from the A. M. Best Company and shall be licensed by the State of West Virginia; and

6.17.b. If a trustee holds the annuity in trust during the life of the mortgagor(s), then

6.17.b.1. the trustee shall be a banking organization or an insurance company which is incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States;

6.17.b.2 the trustee shall either appoint the Secretary of State, or where the trustee institution is chartered under federal law shall appoint its primary federal regulatory agency, as agent for service of process for any communication concerning a reverse mortgage loan made to a West Virginia resident;

6.17.b.3. the trust agreement shall provide that it is governed by West Virginia law;

6.17.b.4. payments derived from the annuity shall be paid by the trustee or the insurance company directly to the mortgagor(s) irrespective of whether the payment is made on behalf of the lender or investor; and

6.17.b.5. the mortgagor(s) shall have a beneficial interest in the trust irrespective of whether the lender or investor also has a beneficial interest in the trust.

**§ 106-19-7 Additional features of reverse mortgage loans.**

7.1. Escrow Account for Taxes and Insurance. -- The lender may maintain an escrow account for purposes of paying real estate taxes and insurance on the real property securing the loan. The lender shall calculate these escrowed amounts in conformity with the method provided by federal laws, regulations, or guidelines for other residential mortgage lenders.

7.2. Shared Appreciation. -- The security agreement may provide that the lender receive a percentage of the future appreciation of the real property securing the loan, i.e., "shared appreciation", in addition to or in lieu of fixed or variable rate interest. This appreciation shall not be considered interest for purposes of any law regulating the maximum rate of interest which may be charged, taken or received. Loans which contain "equity participation" as provided for in subsection 6.7 of this rule may not provide for any other forms of equity sharing or shared appreciation.

7.3. Mortgagor's Right to Lifetime Possession. -- Except where the reverse mortgage has a set fixed term and maturity date, all mortgagor(s) shall retain the right to lifetime possession of the real property which serves as security for the loan, as long as the real property remains the mortgagor(s)' principal residence and subject to the conditions set forth in section 9 of this rule and W. Va. Code § 47-24-4(g).

7.4. Mortgage Insurance. -- The mortgagor(s) may elect to maintain mortgage insurance for the principal and any accrued but unpaid interest. The insurance shall name the mortgagee as beneficiary. This insurance may not be required by the lender as a condition for granting a reverse mortgage loan. This insurance shall not be offered by the lender where the loan is to be sold into the secondary market and the lender has obtained a written commitment from the investor prior to the loan closing to purchase the loan, and has arranged for the delivery of the loan to the investor within forty-five days of the loan closing.

7.5. Lender's Limited Waiver of the Right of Foreclosure. -- Prior to offering reverse mortgage loans, all lenders shall prepare a form entitled "Lender's Limited Waiver of the Right of Foreclosure" for review and approval by the Commissioner of Banking to ensure that this document sets forth the termination events, as applicable, pursuant to section 9 of this rule and W. Va. Code § 47-24-4(g). This document shall be executed by the lender in connection with the closing of every reverse mortgage loan. The lender shall furnish a copy of the executed form to every

mortgagor(s) at closing and shall keep the original form on file for the life of the loan.

**§ 106-19-8 Maintenance of real property securing the reverse mortgage loan.**

8.1. Structural Integrity. -- Mortgagor(s) shall be required to maintain the structural integrity of the real property securing the reverse mortgage loan in the same condition as the property is in at the time of closing or after repairs have been made for which funds have been disbursed or set aside at closing for later disbursement. For purposes of this section, repairs necessary to maintain the structural integrity shall be limited to repairing structural problems threatening the continued viability of the structure as a residential unit and those matters which, without repair, will threaten to materially damage the property or its market value.

8.2. Lender Arrangement of Repair to Maintain Structural Integrity. -- If the mortgagor(s) fails to make a repair required to maintain the structural integrity of the real property in a timely manner, the lender may arrange for the repair and pay for it in the following ways:

8.2.a. by deducting necessary amounts from a reserve fund;

8.2.b. by withholding from one or more monthly payments otherwise due to the mortgagor(s) no more than 25% of each of the monthly payments; or

8.2.c. by adding the amount to the loan principal.

If a reserve fund has been established for repairs, then the lender must first deduct the repair costs from that fund before choosing whether to proceed according to the provisions of subdivision 8.2.b or 8.2.c of this rule. If a reserve fund has not been established, then the lender may choose whether to proceed according to the provisions of subdivision 8.2.b or 8.2.c of this rule, or a combination thereof.

8.3. Lender Must Notify Mortgagor of Repair. -- Prior to making or charging the mortgagor(s) for a repair necessary to maintain the structural integrity of the real property, the lender shall notify the mortgagor(s) of the problem and, unless a threat of imminent danger to life or property exists, provide the mortgagor(s) ninety days in which to make the repairs. If the repairs are not completed by the mortgagor(s) in a satisfactory manner prior to the

end of the appropriate period, the lender may take those steps as it views reasonably necessary to maintain the structural integrity of the real property and charge the mortgagor(s) for all reasonable expenses. If an imminent danger to life or property exists, the lender may proceed to preserve the structural integrity of the real property on as little as forty-eight hours notice to the mortgagor(s).

8.4. Lender Right to Inspect on Notice. -- The lender shall have the right to inspect the real property securing the loan on seventy-two (72) hours notice to the mortgagor but not more often than is reasonably necessary to ensure the continued structural integrity of the real property.

**§ 106-19-9 -- Termination of reverse mortgage loans.**

9.1. Termination Due to Non-temporary Absences. -- A reverse mortgage loan may be terminated by a lender pursuant to W. Va. Code § 47-24-4(g)(2)(B) where the mortgagor(s) ceases to use the real property as his or her principal place of residence for more than 60 consecutive days in any 365 day period without notifying the lender and making arrangements satisfactory to the lender for the maintenance of the real property and the anticipated return of the mortgagor(s). For purposes of this section the term "principal place of residence" means the living and sleeping quarters of the mortgagor. The lender shall not unreasonably withhold consent to the arrangements made by the mortgagor(s) pursuant to this section.

9.2. Termination Due to Events Jeopardizing Lender's Security. -- A reverse mortgage loan may only be terminated by the lender pursuant to W. Va. Code § 47-24-4(g)(1)(D) for the following events as specified in the loan documents:

9.2.a. the mortgagor(s) fails to pay real estate taxes or maintain all insurance required pursuant to the security agreement;

9.2.a.1. If the mortgagor(s) fails to pay taxes or maintain all required insurance, then the lender shall within ten business days of learning of such event, give written notice of the failure to the mortgagor(s) and the third-party, if any, designated by the mortgagor(s) to receive notice of any event that could lead to termination. If the mortgagor(s) has not named a third-party or if the third-party can not be contacted, then the lender shall give written notice of the failure to the County Clerk of the county where the property is located. The lender must give the mortgagor(s) thirty (30) calendar days to cure such failure. In addition, the notice to the mortgagor(s) and

the third party shall advise the mortgagor(s) of his or her right to cure the problem.

9.2.a.2. The failure to pay taxes or maintain all required insurance shall not be construed to be a termination event unless the lender has complied with the provisions set forth in paragraph (1) of this subdivision.

9.2.b. the mortgagor(s)' (i) filing a voluntary petition in bankruptcy or effecting a plan or other arrangement with creditors under court supervision, (ii) having an involuntary petition in bankruptcy filed against the mortgagor that is not discharged within 90 days after it is filed, or (iii) applying for or permitting the appointment of a receiver, trustee or custodian for the real property securing the loan which is not discharged within 90 days after the date of appointment. Provided, That the appointment of a conservator, guardian, committee or other fiduciary of the person to act on the mortgagor(s)' behalf in connection with a determination by a court that the mortgagor(s) is incompetent will not terminate the loan; or

9.2.c. the mortgagor(s) fails to maintain the structural integrity of the real property, as that term is defined in section 8 of this rule. The lender is required to make reasonable efforts to remedy any breach of structural integrity prior to a termination of a reverse mortgage loan under this subdivision.

9.3. Notification in Writing to Mortgagor: -- The mortgagor(s) or his or her estate shall notify the lender, in writing, promptly upon (i) the sale or other transfer of title to the home securing the loan; (ii) upon the mortgagor's death, or if there is more than one mortgagor, then upon the death of the last living mortgagor; or (iii) the occurrence of any event listed in subsections 9.1 or 9.2 of this section which would also cause the loan to terminate.

#### **§ 106-19-10 Permitted fees, costs and payments.**

10.1. Permitted Initial Fees and Charges. -- Other than principal, interest, shared appreciation and equity participation, lenders may only charge, in connection with the origination of reverse mortgage loans, the following fees, costs and payments, as applicable, at closing. The lender before assessing the charge shall disclose the charges to the mortgagor(s) pursuant to section 11 of this rule:

10.1.a. an application fee, which may be collected prior to closing, as limited by the provisions of subsection 6.5 of this rule;

10.1.b. a loan origination fee not to exceed two points based on the value of the real property securing the reverse mortgage loan at the time of loan closing;

10.1.c. the cost of document preparation which is reasonably related to the services provided as incurred and paid to a third-party provider;

10.1.d. the cost of appraising or surveying the property as incurred and paid to a third-party provider;

10.1.e. the cost of a title examination, an abstract of title or title insurance as incurred and paid to a third-party provider;

10.1.f. the cost of a tax search for tax liens existing at the time of closing if the search is not included in the title examination as the cost is incurred and paid to a third-party provider;

10.1.g. the payment to discharge any existing liens on the real property securing the loan as incurred and paid to a third-party;

10.1.h. the cost of recording the reverse mortgage loan as incurred and paid to a third-party;

10.1.i. the cost of actual attorney's fees charged to the lender in connection with the closing of the loan as incurred and paid to a third-party provider;

10.1.j. the cost of a credit report as incurred and paid to a third-party provider;

10.1.k. the cost of a flood zone search as incurred and paid to a third-party provider;

10.1.l. the cost of an inspection to be paid in connection with the origination of the loan but not subsequent to the loan closing as incurred and paid to a third-party provider;

10.1.m. the payment to purchase an annuity as incurred and paid to a third-party;

10.1.n. the payment for any repairs contracted for at or before the loan closing, irrespective of whether the repairs are completed at time of closing or whether the

funds are held in escrow as the payments are incurred and paid to a third-party;

10.1.o. a one-time payment for a tax reporting service as incurred and paid to a third-party;

10.1.p. the cost of purchasing mortgage insurance as incurred and paid to a third-party provider;

10.1.q. the payment of real estate taxes and property insurance as incurred and paid to a third-party; and

10.1.r. the cost of mortgage brokerage services, not to exceed three points based on the value of the real property securing the reverse mortgage loan at the time of loan closing as incurred and paid to a third-party provider.

10.2. Subsequent Permitted Fees and Charges. -- During the life of the loan, lenders may charge the following fees or require the mortgagor(s) to incur the following costs or payments:

10.2.a. the cost of purchasing any additional mortgage insurance as agreed to by the parties;

10.2.b. the costs to maintain the structural integrity of the real property securing the loan in accordance with section 8 of this rule;

10.2.c. the costs of any appraisal for the refinancing or extension of the loan in accordance with subsection 6.12 of this rule;

10.2.d. the payment of real estate taxes and property insurance;

10.2.e. a monthly servicing and administrative fee of not more than \$30 as agreed to by the parties.

10.3. Termination Fee. -- At termination of the loan, lenders may charge a termination or maturity fee which shall be the actual cost of arranging for the sale or foreclosure of the real property securing the loan. The fee may include actual broker's fees, advertising costs, moving and storage costs, and legal and other fees representing actual fees or costs charged to the lender.

10.4. Fees for Escrow Account Impermissible. -- Lenders may not charge any fees for the establishment, maintenance or termination of an escrow account with respect to any reverse mortgage loan.

**§ 106-19-11 Required disclosures for reverse mortgage loans.**

11.1. Disclosure Requirements. -- Prior to accepting an application for any loan, but in any event prior to a lender accepting an application fee, a lender must disclose to each loan applicant the following information, as is relevant to the type of loan being offered:

11.1.a. The following notice, or a similar notice to like effect:

YOU SHOULD CONSULT YOUR TAX, LEGAL OR FINANCIAL ADVISERS OR CONSULT WITH APPROPRIATE AUTHORITIES REGARDING ENTITLEMENTS AND TAX AND ESTATE PLANNING CONSEQUENCES OF A REVERSE MORTGAGE LOAN.

In addition, the lender shall furnish the applicant with a statement prepared by the West Virginia Division of Banking concerning the availability of independent counseling and information services;

11.1.b. The lender's toll free telephone number and the name of a person to whom applicants and mortgagors may address questions, comments or complaints;

11.1.c. A notice that the mortgagor(s) or applicant can submit written complaints to the West Virginia Division of Banking, State Capitol Complex, 1900 Kanawha Boulevard East, Building 3, Room 311, Charleston, West Virginia, 25305-0240;

11.1.d. The events which would terminate or accelerate the loan and an explicit warning, if applicable, that the mortgagor(s) may be compelled to move out of his or her home at the expiration of the loan term or upon acceleration of the loan;

11.1.e. That the loan, if applicable, provides for the lender to receive a percentage of the future appreciated value of the property, i.e., "shared appreciation", what that percentage is, and the lender's method of calculating that amount. In addition, the lender shall provide both a narrative explanation and an example of the application of its methodology in determining the amount. This example must use as its projected real estate appreciation or depreciation rate for home prices the average of the yearly changes in the Consumer Price Index for Shelter for the South Region of the United States for the eight years preceding the year in which the loan is made;

11.1.f. That interest accrues from the time monies are advanced to or on behalf of the mortgagor(s) and whether accrued interest is added to the loan principal;

11.1.g. That the only asset of the mortgagor(s) which may be used by the lender to satisfy the loan is the real property securing the loan and any limitation thereon as may be provided for in subsection 6.7 of this rule. No deficiency judgment may be sought or granted in any civil action involving a reverse mortgage;

11.1.h. That the loan may be prepaid at any time without penalty. The lender shall specify how the value of the home at the time of prepayment will be determined and the method by which the then outstanding loan balance will be prepaid;

11.1.i. All fees, costs and payments to be paid by the mortgagor(s) and whether the application fee, loan origination fee, and/or broker fees are non-refundable;

11.1.j. The mortgagor(s)' right to designate a third party whom the lender would notify in writing of any event that could lead to termination of the loan and to whom the lender must furnish a copy of any foreclosure documents;

11.1.k. A description of any conditions or limitations in connection with the refinancing or extension of any loan, and if applicable, the mortgagor(s)' right to refinance or extend the loan;

11.1.l. The interest rate(s) to be charged on the outstanding principal under any loan and whether the rate(s) are fixed, variable or both. In addition, in a term loan with a fixed rate of interest, the lender shall disclose the total interest payable on the loan principal, assuming maturity of the loan at expiration of the term. In a term loan with a variable rate of interest, the lender shall disclose the estimated total interest payable on the loan principal using the yearly average of the base index and margin chosen by the lender for the eight year period preceding the loan closing and assuming the maturity of the loan at expiration of the term. For tenure reverse mortgage loans, the same disclosures shall be made, except that maturity shall be assumed to occur at the actuarial life expectancy of the mortgagor, or, if there is more than one mortgagor, the younger of the mortgagors;

11.1.m. The following notice, or a similar notice to like effect:

THE LENDER MAKING THIS REVERSE MORTGAGE LOANS IS  
IN COMPLIANCE WITH THE CRITERIA ESTABLISHED BY THE

COMMISSIONER OF THE WEST VIRGINIA DIVISION OF  
BANKING FOR THE MAKING OF SUCH LOANS.;

11.1.n. If applicable, the availability of an annuity, whether an annuity will be required, and if there is an annuity, when the annuity payments will commence, who will own the annuity and the affiliation, if any, between the lender and the company from which the annuity is purchased;

11.1.o. Whether an escrow account will be established, for what purposes and when the escrow account will be terminated;

11.1.p. Whether a reserve fund will be established and for what purposes;

11.1.q. Whether and what type(s) of insurance will be required and the cost of any premiums;

11.1.r. Whether the mortgage broker or any entity acting in a mortgage brokerage capacity, as a general business practice, utilizes the services of two or fewer lenders, and if so, the name(s) of the lender(s);

11.1.s. If applicable, that the loan provides for the lender to receive "equity participation", the maximum total percentage obligation of the mortgagor(s) to the lender arising from the reverse mortgage loan, the minimum amount due at closing, if any, and what is included and what is excluded from these amounts. In addition, the lender shall provide both a narrative explanation and an example demonstrating equity participation; and shall, if applicable, provide an explanation and demonstration of anticipated shared appreciation; and

11.1.t. Any additional information as the lender believes appropriate, as long as the information is complete, accurate and not misleading.

11.2. Disclosure Requirement Procedures. - The lender shall furnish the information required by subdivisions 11.1.a through 11.1.c of this subsection to the mortgagor(s) on a separate sheet. The information set forth in subdivisions 11.1.d through 11.1.f must be furnished by the lender to the mortgagor(s) on a separate sheet and in bold type.

11.3. Counseling Information. -- Prior to an applicant's receiving counseling pursuant to subsection 6.11 of this rule, the lender shall furnish for term loans, a schedule of estimated payments to the mortgagor(s) and the total payment in dollars over the term of the loan. For

tenure loans, a schedule of estimated payments to the mortgagor(s) shall be furnished. The lender shall label the schedules as "estimates". The lender shall make the foregoing disclosure prior to or simultaneously with the approval of the application.

11.4. Notice in Writing Regarding Move-out. -- Six months prior to the end of a term loan, the lender shall disclose, in writing, if applicable:

11.4.a. that the mortgagor(s) is responsible for making real estate tax and insurance payments; and

11.4.b. that the mortgagor(s) will have to vacate his or her home upon the expiration of the term and the exact date that the move-out is required.

#### **§ 106-19-12 Availability of reverse mortgage loans.**

12.1. Advertising and Promotional Materials. -- Lenders shall maintain copies of all advertising and promotional materials for all reverse mortgage loans for a period of two years commencing from the first date that the material was used to solicit reverse mortgage loans.

12.2. Retention of Applications. -- Lenders shall maintain an application log for all applications. In addition, the lender shall maintain rejected mortgage applications files for a minimum of twenty-five months from the date of notice of the rejection.

#### **§ 106-19-13 Administrative penalties and hearings.**

13.1. Disciplinary Action. -- Any person may be subject to disciplinary action as may be determined to be appropriate by the Commissioner of Banking or the West Virginia Board of Banking and Financial Institutions for violations of this rule or the reverse mortgage laws as provided in W. Va. Code § 47-24-8(a). The penalties may include civil money penalties where imposed by a court or otherwise agreed to by the parties. It shall be a violation of this rule to engage in a pattern of conduct that demonstrates the lender's gross incompetence or dishonesty. Such conduct includes, but is not limited to, a pattern of unjustified late payments, the failure to provide proper disclosures, the receipt of unauthorized fees, the failure to maintain the required line of credit, any violation of the procedures set forth in this rule, and the failure to perform all required duties in an honest, fair and reasonable manner.

13.2. Administrative Hearing. - Prior to the Commissioner of Banking revoking a lender's license, charter or approval to make reverse mortgage loans pursuant to section 4 of this rule, he or she shall hold an administrative hearing. Revocation may also be ordered after an administrative hearing by the West Virginia Board of Banking and Financial Institutions.

**§ 106-19-14 Special provisions regarding payment of real estate taxes and insurance.**

14.1. Insurance Selection. -- Mortgagor(s) shall have the right to choose a property insurer(s) subject to the lender's consent which shall not be unreasonably withheld. If the mortgagor(s) fails to choose a property insurer(s) in a timely manner or if the insurer(s) is not acceptable to the lender, then the lender may insure the property with a carrier of its choice.

14.2. Advance Funds for Taxes and Insurance. -- If there is no escrow account, then the lender may advance the funds necessary to pay for insurance coverage or to pay real estate taxes and to reimburse itself in the following ways:

14.2.a. by deducting necessary amounts from a reserve fund;

14.2.b. by withholding from one or more monthly payments otherwise due to the mortgagor(s) no more than 25% of each monthly payment; or

14.2.c. by adding the amount to the loan principal.

If a reserve fund has been established, then, to the extent possible, the lender must reimburse itself from such fund before choosing subdivision 14.2.b or 14.2.c above. If a reserve fund has not been established, then the lender may choose whether to proceed according to subdivision 14.2.b or 14.2.c or a combination of these subdivisions.

**§ 106-19-15 Aggregate loan limits for certain lenders.**

15.1. Aggregate loan limits. -- No West Virginia state-chartered bank or credit union shall retain as an asset reverse mortgage loans in an aggregate amount exceeding ten percent of the institution's capital, undivided profits and surplus.

15.2. Amount Explanation. -- For purposes of complying with this section, the amount of each reverse mortgage loan

shall be considered to be the loan balance at anticipated loan maturity which is not guaranteed or insured as to loss of principal by the United States government or an agency of the federal government.



## DIVISION OF BANKING

Building #3, Room 311 • State Capitol Complex • 1900 Kanawha Blvd., East • Charleston, WV 25305-0240 • FAX: (304) 558-0442

### Promulgation History of Rule Series 1, 3, 4 and 19 of Title 106 CSR

#### Date

- July 19, 1996-- Filed Notice of a Comment Period on Proposed Rules (FORM 2) Proposals to amend Rules 1, 3, and 4; Delete Rules 2, 5 and 8; and to create a new Rule 19 to regulate reverse mortgages.
- Comment period runs from 7/19/96 to 8/19/96.
- August 28, 1996-- Filed Notice of Agency Approval of Proposed Rules (FORM 3) Approving proposal to amend Rules 1, 3, and 4; Delete Rules 2, 5 and 8; and to create a new Rule 19 to regulate reverse mortgages. [Note: the text of Rule 8 was largely being transferred to Rule 1 as amended; while small portions of the text to Rules 2 & 5 were being transferred to Rule 4 as amended].
- December 2, 1996-- Legislative Rule-Making Review Committee (LRMC) hearing on proposed Banking rules.
- December 19, 1996-- Notice of Action by LRMC approving Rules 1, 3, 4 and 19 as modified; and Rules 2, 5, and 8 as submitted for deletion.
- December 20, 1996-- Filed Notice of Rule Modification of a Proposed Rule for Rules 1, 3, 4 and 19. (FORM 4)
- February 21, 1997-- In response to LRMC's counsel's direction for procedural efficiency, the repeal of Rule 8 was incorporated into the amendments to Rule 1, and the repeal of Rules 2 & 5 were incorporated into the amendments to Rule 4. Filed Notice of Rule

Modification of a Proposed Rule for Rules 1 and 4 (FORM 4).  
Submitted letter withdrawing filing for deletion of Rules 2, 5 and  
8.

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- March 3, 1997-- SB 157 introduced and referred to the Senate Judiciary Committee
- March 28, 1997-- Committee substitute for SB 157 reported by Senate Judiciary  
Committee. Provides for approval of 106 CSR §§ 1, 3, 4 and 19 as  
filed.
- April 20, 1997-- SB 157 passed Legislature.



**DIVISION OF BANKING**

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**CONSENT TO FILE RULE**

May 8, 1997

**TO WHOM IT MAY CONCERN:**

Title of Rule: Rule for Reverse Mortgage Loans

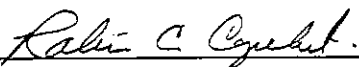
Title Number: 106

Series Number: 19

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Pursuant to West Virginia Code §§ 5F-2-2(a) and 64-7-4(c), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 8th day of May, 1997.

  
Robin C. Capehart  
Secretary of Tax & Revenue

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

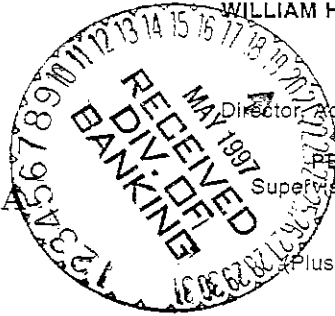
JAN CASTO  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 558-6000  
Corporations: (304) 558-8000  
FAX: (304) 558-0900



STATE OF WEST VIRGINIA  
OFFICE OF THE SECRETARY OF STATE  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770



WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

Plus all the volunteer  
help we can get!

TO: TIM WINSLOW

AGENCY: BANKING

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 16, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 19 TITLE: 106 BANKING

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Jonathan C. Winkler

TITLE OF PERSON SIGNING: General Counsel

DATE: 5/22/97

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.