

5. Every licensee hereunder may lend any sum of money not exceeding ~~one~~ two thousand dollars in amount and may charge, contract for, and receive thereon interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the board under authority of this section or by the provisions of the preceding subsection 4.

Sec. 3. Section five hundred thirty-six point fifteen (536.15), Code 1979, is amended to read as follows:

536.15 USURY--LIMITATION ON PRINCIPAL LOAN. No licensee shall directly or indirectly charge, contract for, or receive any interest or consideration greater than the lender would be permitted by law to charge if he or she were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than ~~one~~ two thousand dollars. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both to the licensee at any time the sum of more than ~~one~~ two thousand dollars for principal.

Sec. 4. This Act is effective January first following its enactment.

Approved June 6, 1979

CHAPTER 132

ALTERNATIVE MORTGAGE INSTRUMENTS

H. F. 658

AN ACT to authorize real property loans secured by alternative mortgage instruments.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Title twenty-three (XXIII), Code 1979, is amended by adding sections two (2) through fifteen (15) of this Act as a new chapter.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Lender" means a bank, savings and loan association or credit union which is organized under the laws of this state or of the United States and which is authorized to engage in business in this state.

2. "Mortgage instruments" means and includes all documents which are evidence of the existence of a loan and of the obligations of the lender and the borrower.

3. "Regulatory agency" means as follows:

a. With respect to banks, the superintendent of banking.

b. With respect to savings and loan associations, the supervisor of savings and loan associations.

c. With respect to credit unions, the administrator of the credit union department.

4. "Standard mortgage instrument" means a mortgage which contains a fixed interest rate, and which provides for equal payments and full amortization.

5. "Graduated payment mortgage" means the type of mortgage described in section four (4) of this Act.

6. "Variable rate mortgage" means the type of mortgage described in section seven (7) of this Act.

7. "Reverse annuity mortgage" means the type of mortgage described in section eleven (11) of this Act.

Sec. 3. NEW SECTION. ALTERNATIVE MORTGAGE INSTRUMENTS.

1. A lender may make permanent loans or combined construction and permanent loans secured by first liens on real property which are graduated payment mortgages, variable rate mortgages or reverse annuity mortgages, provided that these loans shall be subject to the provisions of this chapter and to rules issued by the regulatory agency. The provisions of this chapter supersede any conflicting provisions of chapters five hundred twenty-four (524), five hundred thirty-three (533) and five hundred thirty-four (534) of the Code with respect to repayment and amortization of real property loans. Loans which are made under this chapter are subject to other laws of this state which are applicable to a lender, except to the extent the provisions of this chapter conflict with those laws, in which event the provisions of this chapter shall govern.

2. Each prospective borrower who is offered an alternative mortgage instrument by a lender must also be offered a standard mortgage instrument by the lender.

3. A lender offering to make a loan secured by an alternative mortgage instrument shall obtain and retain in the loan application file a certification signed by the prospective borrower that the borrower received the disclosure materials specified in this chapter for the type of mortgage instrument used, and that the disclosure was made prior to the time the borrower made the election to accept the alternative mortgage instrument.

Sec. 4. NEW SECTION. GRADUATED PAYMENT MORTGAGE--TERMS. A graduated payment mortgage is a mortgage which secures a loan having scheduled payments to be made directly by the borrower which begin at a level lower than that necessary to fully amortize the loan within its term, and which gradually increase to a predetermined level after which the amount of each payment remains constant. The period during which the payments may increase, the rate of increase and the interest rate shall be fixed for the entire term of the loan at the time of its origination. The period during which the payments may increase shall not exceed ten years, the rate of increase shall not exceed three percent annually over a ten-year period, three and one-half percent annually over a nine-year period, four and one-half percent annually over an eight-year period, five and one-half percent annually over a seven-year period, six and one-half percent annually over a six-year period or seven and one-half percent annually over a period of five years or less, and the amount of each payment shall not be changed more often than once each year with the first change to occur not less than twelve months after the due date of the first scheduled payment on the loan.

In connection with a loan which is secured by a graduated payment mortgage, the borrower may pledge funds held in a savings account owned by the borrower as additional security for the loan. Portions of the principal and earnings of the pledged savings account shall be subject to withdrawal by and payment to the lender on a periodic basis as supplements to loan payments made directly by the borrower. In the event of default by the borrower, a portion of the balance of the pledged savings account may be used for the purpose of curing the default if so provided in the loan agreement, but in any event the balance of the pledged savings account shall be used to reduce the outstanding balance due on the loan upon foreclosure.

Sec. 5. NEW SECTION. CONVERSION OF GRADUATED PAYMENT MORTGAGE. The borrower under a graduated payment mortgage has the right to convert at any time to a standard mortgage instrument, if at the time of exercising the option to convert the borrower qualifies for the standard mortgage instrument under the lender's ordinary underwriting standards. Penalties or fees otherwise permitted by law upon prepayment of a loan shall not be assessed by the lender upon conversion of a graduated payment mortgage if the borrower chooses to convert the graduated payment mortgage at the interest rate specified in the graduated payment mortgage and for the remainder of the term of the graduated payment mortgage.

Sec. 6. NEW SECTION. DISCLOSURE FOR GRADUATED PAYMENT MORTGAGE. Prior to the closing of a loan secured by a graduated payment mortgage, the lender shall deliver to the prospective borrower written materials which explain in reasonably simple terms the graduated payment mortgage offered and a standard mortgage instrument for the same principal amount. These materials shall include all of the following:

- a. A side-by-side comparison of differing interest rates and other terms.
- b. Payment schedules for both the graduated payment mortgage and the standard mortgage, and the total payment in dollars over the full term of each type of loan.

If the loan agreement which is offered provides for a pledged savings account as additional security for the loan, then the disclosure under this paragraph also shall include a schedule of the withdrawals to be made from the savings account as supplemental mortgage payments, the interest rate applicable to the pledged savings account, and a description of the contractual rights of the lender and the borrower with respect to the pledged savings account.

- c. A description of the conversion option which is available to the borrower under section five (5) of this Act.

- d. A statement prominently displayed that the borrower has the option to elect a standard mortgage instrument rather than a graduated payment mortgage.

Sec. 7. NEW SECTION. VARIABLE RATE MORTGAGE--TERMS. A variable rate mortgage is a mortgage which secures a loan bearing an interest rate which fluctuates in direct relation to a reference index, resulting in future payments which may be of an amount not known at the time the loan is made. Interest rate adjustments may not be made more frequently than once each year, on fixed dates specified in the loan agreement and commencing not less

than twelve months after the due date of the first scheduled payment on the loan. The borrower shall receive not less than sixty days notice prior to the effective date of any rate change. The notice shall specify the new interest rate and, after giving effect to the interest rate adjustment, the new dollar amount of each periodic payment or the new term of the loan should the borrower elect to extend the loan. Upon receipt of a notice of an interest rate increase, a borrower shall be entitled, by notifying the lender not less than thirty days prior to the effective date of the increase, to require that in lieu of an increase in the amount of any scheduled periodic payment on the loan the term of the loan be extended by a period sufficient to eliminate or reduce the increase in the periodic payment amount, provided that the cumulative net effect of all such extensions shall be a maximum of one-third of the original term of the loan. A decrease in the interest rate of the loan shall be applied by the lender first to a reduction of any previously extended loan maturity and then to a reduction of periodic payment amounts. The smallest adjustment which may be made in the rate shall be one-tenth of one percent and the greatest adjustment in the rate which may be made at any one time shall be one-half of one percent. Changes in the reference index which are not reflected in the loan interest rate, either at the option of the lender in the case of increases or because the change exceeds the smallest or greatest adjustment permitted by this paragraph, may be accumulated by the lender in the case of increases and shall be accumulated by the lender in the case of decreases and may, in the case of increases, or shall, in the case of decreases, be taken at a later time or used to offset other changes. The maximum net increase in the interest rate over the life of the loan shall be two and one-half percent. The reference index to which the interest rate is tied shall be the same reference index as that which is used under section five hundred thirty-five point two (535.2), subsection three (3), of the Code for purposes of determining the usury rate for this state.

Sec. 8. NEW SECTION. PREPAYMENT OF VARIABLE RATE MORTGAGE. Within sixty days after the borrower is given notice of a change in the interest rate under a variable rate mortgage, the borrower is entitled, if the change is an increase in the interest rate, to prepay the loan, either in full or in part, without penalty. If the borrower elects to prepay under this section, the borrower waives for the year the right under section seven (7) of this Act to extend the maturity date of the loan.

Sec. 9. NEW SECTION. RATE CHANGE NOTICE FOR VARIABLE RATE MORTGAGE. The notice of interest rate change given by the lender under section seven (7) of this Act shall include all of the following information:

1. The current interest rate and new interest rate under the loan.
2. The old and new index rates.
3. The amount of accumulated but unused rate changes, if any.
4. The current monthly payment, the new monthly payment if the rate change is placed into effect, and the remaining maturity of the loan.
5. If the rate change is an increase, a description of the options which the borrower has upon receipt of the notice, including the new payment and the new maturity date of the loan if the borrower elects to extend the loan to the maximum period permitted under section seven (7) of this Act.

6. If the rate change is a decrease, a description of the manner in which the decrease is to be applied.

Sec. 10. NEW SECTION. DISCLOSURES FOR VARIABLE RATE MORTGAGE. Prior to the closing of a loan secured by a variable rate mortgage, the lender shall deliver to the prospective borrower written materials which explain in reasonably simple terms the variable rate mortgage which is offered and a comparable standard mortgage instrument. These written materials shall include all of the following:

1. A side-by-side comparison of differing interest rates and other terms.
2. Payment schedules for both types of instruments, including a "worst case" schedule for the variable rate mortgage which shows every maximum increase at the time it could first occur, the highest possible payment during the loan term, and the total payment in dollars over the full term of each loan, with a statement that the total payment for the variable rate mortgage would be greater in the event of election of the borrower to extend the loan.

3. Information regarding the index used.

4. A description of the borrower's options in the event of an increase in the interest rate.

5. A statement, prominently displayed, that the borrower has the option to elect a standard mortgage instrument.

6. A statement that if the prospective borrower has questions regarding the disclosures, the borrower may contact the regulatory agency of this state which regulates the lender. Each lender shall also disclose the name and address and telephone number of the particular individual who is designated by the regulatory agency of this state to respond to inquiries under this paragraph for the type of lender making the disclosure.

Sec. 11. NEW SECTION. REVERSE ANNUITY MORTGAGES. A reverse annuity mortgage is a mortgage on one-family or two-family residential real property which secures a loan having no periodic principal payments due the lender, and the proceeds of which are either paid to the borrower on a periodic basis or used by the lender to purchase an annuity having periodic payments to the borrower. The loan may become due either on a specific date or upon the occurrence of a specific event. Loans secured by reverse annuity mortgages may be made only upon the real property described in this section, and only upon compliance by the lender with sections twelve (12), thirteen (13) and fourteen (14) of this Act.

Sec. 12. NEW SECTION. QUALIFICATIONS FOR REVERSE ANNUITY MORTGAGE PLANS.

1. A lender may make reverse annuity mortgage loans upon the execution by borrowers of mortgage instruments that meet the requirements of this chapter. The aggregate outstanding balances of all loans evidenced by these instruments shall not exceed one-fourth of the maximum amount which the lender is permitted by law to invest in conventional home purchase-money mortgages, and, in addition, shall be considered to be conventional home mortgages for purposes of that limitation.

2. Mortgage instruments evidencing a reverse annuity mortgage loan shall not be used by a lender unless the instruments have been approved by the regulatory agency.

3. The instruments submitted for approval under this section must satisfy the requirements of section thirteen (13) of this Act. The instruments may include provisions not required by this chapter, but the regulatory agency may disapprove a provision which is inconsistent with the provisions of this chapter or with the intents and purposes of this chapter.

4. A substantive revision of an approved form shall not be made except upon the prior written approval of the regulatory agency.

5. Loan applicants shall not be bound for seven days after the loan commitment is made.

Sec. 13. NEW SECTION. TERMS AND CONDITIONS OF REVERSE ANNUITY MORTGAGES. Mortgage instruments evidencing a reverse annuity mortgage loan shall contain provisions to ensure all of the following:

1. The unpaid balance of the loan, whether inclusive or exclusive of interest, will be unamortized and repayable in full upon the borrower's death, or upon the prior sale of the property securing the loan, subject to the obligation of the lender to refinance as provided in subsection seven (7) of this section. The unpaid balance of the loan shall not exceed ninety-five percent of the value of the property given as security. If the loan is made to joint borrowers, it may be repayable upon the death of the last surviving borrower, or upon the prior sale of the property.

2. If the lender is to act as agent for the borrower in the purchase of an annuity for the borrower from a life insurance company, the lender must be expressly authorized by the borrower to act as the borrower's agent and the annuity must be purchased from a life insurance company which is authorized to issue annuities in this state.

3. Annuities paid to borrowers may be either for life or for a specified term. Annuity contracts with life insurance companies may call for immediate payment or may defer payment for a specified number of years. If deferred, the lender may make payments on an annuity to the borrower as loan advances during the deferral period, provided that the maximum loan balance reached at the end of the deferral period does not exceed ninety-five percent of the property value at the end of the deferral period.

4. If an annuity is purchased from an insurance company, the annuity contract must provide that the insurance company make interest payments on the loan directly to the lender.

5. The loan may be prepaid, and the mortgage released, at any time without penalty.

6. The interest rate payable by the borrower shall be fixed at the time of loan origination and shall not vary during the term of the loan.

7. The loan may become due either on a specific date or upon the occurrence of a specific event, provided that the lender shall refinance, at the request of the borrower and at a market interest rate which is current as of the date the loan becomes due, a loan secured by a reverse annuity mortgage which becomes due prior to a sale or gift of an interest in the real property.

Sec. 14. NEW SECTION. DISCLOSURE FOR REVERSE ANNUITY MORTGAGES. A lender shall not offer to make reverse annuity mortgage loans until the lender has complied with all of the following:

1. The lender shall cause to be prepared a pamphlet containing the following information:

- a. The nature and effect of the loan.
- b. An example, using a typical loan situation, which describes the gross and net annuity the borrower would receive, and the amount of debt to be collected on death or a prior sale of the property.
- c. The rights and obligations of the borrower, should the term of the loan expire prior to the death of the borrower.

The lender shall not make the pamphlet available to the general public until it has been approved by the regulatory agency. The regulatory agency shall not approve a pamphlet unless it provides full and accurate disclosure of the information required by this subsection.

2. The lender shall make available to a prospective borrower the pamphlet required by subsection one (1) of this section, and shall discuss the information contained in the pamphlet with the prospective borrower before giving the borrower a loan application form.

3. At the time of loan commitment, the lender shall deliver to the borrower written materials explaining in reasonably simple language the terms of the loan being offered. These materials shall include all of the following:

- a. The schedule and an explanation of payments to be received by borrower, and whether or not property taxes and insurance are to be deducted from the payments.
- b. A schedule of the outstanding debt which would exist during the term of the loan.
- c. The repayment date of the loan, if the loan is a fixed-term loan, and a description of any event which causes the loan to become due, including but not limited to a sale of the property or the death of one or more of the mortgagors.
- d. The method of repayment, and the repayment schedule, if any.
- e. All contractual contingencies, including but not limited to lack of home maintenance and other default provisions, which may result in a forced sale of the property.
- f. The interest rate and the total amount of interest payable on the loan.
- g. The effective interest rate and the amount of interest earned or expected to be earned on purchased annuities, based on standard mortality tables.
- h. The name and address of the insurance company from which the annuity is to be purchased, if any.
- i. The initial loan fees and charges.
- j. A description of the prepayment and refinancing features of the loan.
- k. A statement that the mortgage may have tax and estate-planning consequences and may effect levels of or eligibility for certain governmental benefits, grants or pensions, and that the borrower is advised to explore these matters with appropriate authorities or with an attorney.

4. The lender shall obtain a statement signed by the borrower which acknowledges receipt of the disclosure required by subsection three (3), paragraph e, of this section.

Sec. 15. NEW SECTION. ENFORCEMENT. An agency of this state which is required by the laws of this state to regulate a lender shall enforce the provisions of this chapter with respect to the lender. The regulatory agency may petition the district court for Polk county in an action in equity to obtain such relief as may be necessary to obtain compliance with this chapter.

A regulatory agency may promulgate rules as necessary to administer or enforce this chapter.

Sec. 16. Acts of the Sixty-seventh General Assembly, 1978 Session, chapter one thousand one hundred ninety (1190), section twelve (12), subsection two (2), paragraph c, as amended effective July 1, 1979, by Senate File 158, 1979 Session, section twenty-two (22), is further amended effective July 1, 1979, to read as follows:

c. If the purpose of the loan is to enable the borrower to purchase a single-family or two-family dwelling, for his or her residence, the any provision of a loan agreement shall not contain any provision which prohibits the borrower from transferring his or her interest in the property to a third party for use by the third party as his or her residence, and--shall--not contain or any provision which requires or permits the lender to make a change in the interest rate, the repayment schedule or the term of the loan as a result of a transfer by the borrower of his or her interest in the property to a third party for use by the third party as his or her residence shall not be enforceable except as provided in the following sentence. If the lender on reasonable grounds believes that its security interest or the likelihood of repayment is impaired, based solely on criteria which is not more restrictive than that used to evaluate a new mortgage loan application, the lender may accelerate the loan, or to offset any such impairment, may adjust the interest rate, the repayment schedule or the term of the loan. A provision of a loan agreement which violates this paragraph is void.

Approved June 10, 1979

CHAPTER 133
NONRESIDENT ALIEN LAND OWNERSHIP

H. F. 148

AN ACT relating to the ownership of land by nonresident aliens and providing penalties.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Chapter five hundred sixty-seven (567), Code 1979, is amended by striking the chapter and inserting in lieu thereof sections two (2) through twelve (12) of this Act.