

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4168

(By Delegates R. M. Thompson, Perry,
Frich, Iaquina, G. White and Hrutkay)



Passed March 10, 2004

In Effect Ninety Days from Passage

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(BY DELEGATES R. M. THOMPSON, PERRY,
FRICH, IAQUINTA, G. WHITE AND HRUTKAY)

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AN ACT to amend and reenact §31-17-2 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all relating to mortgage loans; exempting mortgage loan closing costs from consumer sales and service tax levied on brokerage fees, additional charges and finance charges; requiring that funds are available for settlement of a real estate mortgage transaction; defining applicability of the law; providing definition of terms used; establishing duty of lender; maintaining validity of loan documents; and providing a penalty for violations of the article.

Be it enacted by the Legislature of West Virginia:

That §31-17-2 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding

thereto a new article, designated §46A-6K-1, §46A-6K-2, §46A-6K-3, §46A-6K-4 and §46A-6K-5, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-2. License required for lender, broker or loan originator; exemptions.

1 (a) No person shall engage in this state in the business of
2 lender, broker or loan originator unless and until he or she shall
3 first obtain a license to do so from the commissioner, which
4 license remains unexpired, unsuspended and unrevoked, and no
5 foreign corporation shall engage in business in this state unless
6 it is registered with the secretary of state to transact business in
7 this state.

8 (b) Brokerage fees, additional charges and finance charges
9 imposed by licensed mortgage brokers, lenders and loan
10 originators are exempt from the tax imposed by article fifteen,
11 chapter eleven of this code beginning on the first day of
12 January, two thousand four.

13 (c) The provisions of this article do not apply to loans made
14 by the following:

15 (1) Federally insured depository institutions;

16 (2) Regulated consumer lender licensees;

17 (3) Insurance companies;

18 (4) Any other lender licensed by and under the regular
19 supervision and examination for consumer compliance of any
20 agency of the federal government;

21 (5) Any agency or instrumentality of this state, federal,
22 county or municipal government or on behalf of the agency or
23 instrumentality;

24 (6) By a nonprofit community development organization
25 making mortgage loans to promote home ownership or im-
26 provements for the disadvantaged which loans are subject to
27 federal, state, county or municipal government supervision and
28 oversight; or

29 (7) Habitat for humanity international, inc., and its affiliates
30 providing low-income housing within this state.

31 Loans made subject to this exemption may be assigned,
32 transferred, sold or otherwise securitized to any person and
33 shall remain exempt from the provisions of this article, except
34 as to reporting requirements in the discretion of the commis-
35 sioner where the person is a licensee under this article. Nothing
36 herein shall prohibit a broker licensed under this article from
37 acting as broker of an exempt loan and receiving compensation
38 as permitted under the provisions of this article.

39 (d) A person or entity designated in subsection (c) of this
40 section may take assignments of a primary or subordinate
41 mortgage loan from a licensed lender and the assignments of
42 said loans that they themselves could have lawfully made as
43 exempt from the provisions of this article under this section do
44 not make that person or entity subject to the licensing, bonding,
45 reporting or other provisions of this article except as the
46 defense or claim would be preserved pursuant to section one
47 hundred two, article two, chapter forty-six-a of this code.

48 (e) The placement or sale for securitization of a primary or
49 subordinate mortgage loan into a secondary market by a
50 licensee may not subject the warehouser or final securitization
51 holder or trustee to the provisions of this article: *Provided*, That
52 the warehouser, final securitization holder or trustee under an

53 arrangement is either a licensee, or person or entity entitled to
54 make exempt loans of that type under this section, or the loan
55 is held with right of recourse to a licensee.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6K. GOOD FUNDS SETTLEMENT ACT.

§46A-6K-1. Applicability.

1 This article applies to the settlement of loans secured by
2 deeds of trust on owner-occupied residential dwellings with
3 accommodations for not more than four families. This article
4 does not apply to construction loans or any other loans which,
5 by agreement of the parties, provide for the disbursement of the
6 proceeds in stages.

§46A-6K-2. Definitions.

1 (a) "Collected funds" or "good funds" means moneys used
2 to fund the disbursement of settlement proceeds deposited and
3 irrevocably credited to a settlement agent's account.

4 (b) "Disbursement of loan funds" means the delivery of the
5 loan funds by the lender to the settlement agent in the form of:

6 (1) Cash;

7 (2) Wired funds;

8 (3) Certified check;

9 (4) Checks issued by the United States treasury, the state of
10 West Virginia or an instrumentality of the United States or state
11 of West Virginia;

12 (5) Cashier's check or teller's check or other similar draft
13 or obligation of a federally insured bank, savings bank, savings
14 and loan association or credit union or of any holding company
15 or wholly owned subsidiary of the foregoing;

16 (6) Checks issued by a licensed lender qualified to do
17 business in West Virginia which has posted the surety bond
18 required by subsection (b), section four, article seventeen,
19 chapter thirty-one of this code;

20 (7) Checks issued by an insurance company licensed and
21 regulated by the West Virginia insurance commission, which
22 checks are drawn on a federally insured financial institution;

23 (8) Checks drawn on the escrow account of an attorney
24 licensed to practice law in West Virginia or on the escrow
25 account of a real estate broker licensed in West Virginia; or

26 (9) Personal check or checks in an aggregate amount not
27 exceeding five thousand dollars per loan closing.

28 (c) "Disbursement of settlement proceeds" means the
29 payment of all proceeds of the transaction by the settlement
30 agent to the persons entitled thereto.

31 (d) "Lender" means any person regularly engaged in
32 making loans secured by deeds of trust to secure debt on West
33 Virginia real estate. A person is considered to be regularly
34 engaged in making loans if he or she makes more than five such
35 loans in any one calendar year.

36 (e) "Loan closing" means that time agreed upon by the
37 borrower, lender, seller, if applicable, and settlement agent
38 when the execution by the borrower and delivery of the loan
39 documents to the settlement agent occur.

40 (f) "Loan documents" means the note evidencing the debt
41 due the lender, the deed of trust, or mortgage securing the debt
42 due to the lender, and any other documents required by the
43 lender to be executed by the borrower as a part of the transac-
44 tion.

45 (g) "Loan funds" means the gross or net proceeds of the
46 loan to be disbursed by or on behalf of the lender at loan
47 closing.

48 (h) "Parties", as used in this subsection, means the seller,
49 purchaser, borrower, lender and the settlement agent, as
50 applicable.

51 (i) "Settlement" means the time when the settlement agent
52 has received the duly executed deed, loan funds, loan docu-
53 ments and other documents and funds required to carry out the
54 terms of the contract between the parties.

55 (j) "Settlement agent" means the person authorized by law
56 to be responsible for conducting the settlement and disburse-
57 ment of the settlement proceeds.

§46A-6K-3. Duty of lender.

1 The lender shall, at or before loan closing, cause disburse-
2 ment of loan funds to the settlement agent; however, in the case
3 of a refinancing, or any other loan where a right of rescission
4 applies, the lender shall, within one business day after the
5 expiration of the rescission period required under the federal
6 Truth-in-Lending Act (15 U. S. C. §1601 et seq.), cause
7 disbursement of loan funds to the settlement agent, unless the
8 loan is rescinded by the customer. All funds disbursed by the
9 lender to the settlement agent must be collected funds. The
10 lender is not entitled to receive or charge any interest on the
11 loan until disbursement of loan funds and loan closing has
12 occurred.

§46A-6K-4. Validity of loan documents.

1 Failure to comply with the provisions of this article does
2 not affect the validity or enforceability of any loan documents
3 executed.

§46A-6K-5. Penalty.

1 Any persons suffering losses due to the failure of the lender
2 or the settlement agent to disburse settlement proceeds as
3 required by this chapter shall be entitled to recover, in addition
4 to other actual damages, double the amount of any interest
5 collected in violation of section three of this article plus
6 reasonable attorneys' fees incurred in the collection thereof.

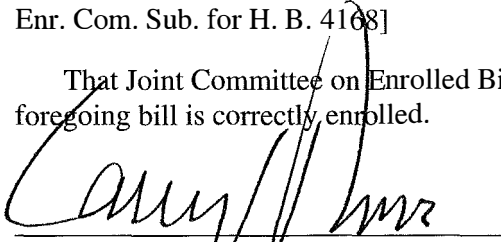
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6 reasonable attorneys' fees incurred in the collection thereof.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.




Chairman Senate Committee



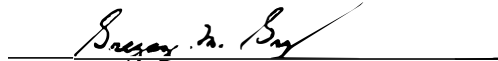
Chairman House Committee

Originating in the House.

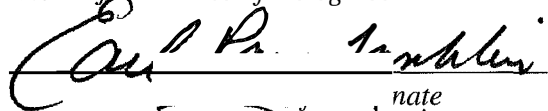
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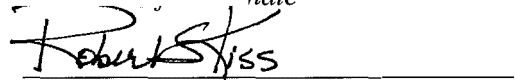
Clerk of the Senate



Clerk of the House of Delegates



Clerk of the House of Delegates



Speaker of the House of Delegates

The within is approved this the 20th
day of March, 2004.



Governor

PRESENTED TO THE

GOVERNOR

DATE 3/19/04

TIME 2:40pm