

ENROLLED

Senate Bill No. 336

(BY SENATOR MINARD)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §31-17-2 of the Code of West Virginia, 1931, as amended, relating to license required for residential mortgage lenders and brokers and exemptions thereto; and eliminating the exemption for a lender under the regular supervision and examination for consumer compliance by any agency of the federal government.

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 to read as follows:

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

§31-17-2. License required for lender and broker originator; exemptions.

1 (a) A person may not engage in this state in the business
2 of lender or broker unless and until he or she first obtains a
3 license to do so from the commissioner, which license
4 remains unexpired, unsuspended and unrevoked, and no
5 foreign corporation may engage in business in this state
6 unless it is registered with the Secretary of State to transact
7 business in this state.

8 (b) All mortgage loan originators, as that term is defined
9 by section two, article seventeen-a of this chapter, shall
10 obtain a mortgage loan originator license pursuant to said
11 article.

12 (c) Brokerage fees, additional charges and finance
13 charges imposed by licensed mortgage brokers, lenders and
14 loan originators are exempt from the tax imposed by article
15 fifteen, chapter eleven of this code beginning on January 1,
16 2004.

17 (d) The provisions of this article do not apply to loans
18 made by the following:

19 (1) Federally insured depository institutions;

20 (2) Regulated consumer lender licensees;

21 (3) Insurance companies;

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

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

30 (6) Habitat for Humanity International, Inc., and its
31 affiliates providing low-income housing within this state.
32 Loans made subject to this exemption may be assigned,
33 transferred, sold or otherwise securitized to any person and
34 shall remain exempt from the provisions of this article,
35 except as to reporting requirements in the discretion of the
36 commissioner where the person is a licensee under this
37 article. Nothing herein shall prohibit a broker licensed under
38 this article from acting as broker of an exempt loan and
39 receiving compensation as permitted under the provisions of
40 this article.

41 (e) The provisions of this article do not apply to loans
42 brokered by a federally insured depository institution.

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

53 (g) The placement or sale for securitization of a primary
54 or subordinate mortgage loan into a secondary market by a
55 licensee may not subject the warehouser or final securitiza-
56 tion holder or trustee to the provisions of this article:
57 *Provided*, That the warehouser, final securitization holder or
58 trustee under an arrangement is either a licensee or person
59 or entity entitled to make exempt loans of that type under
60 this section, or the loan is held with right of recourse to a
61 licensee.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2012.

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Governor