

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 383**

4 (By Senators Tucker, Barnes, D. Hall and Snyder)

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6 [Originating in the Committee on Banking and Insurance;
7 reported February 7, 2014.]
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9
10 A BILL to amend and reenact §31-17-1 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §31-17A-2 of said
12 code, all relating to permitting certain owners of residential
13 real estate limited exemptions from the licensing requirements
14 of the West Virginia Residential Mortgage Lender, Broker and
15 Servicer Act and the West Virginia Safe Mortgage Licensing Act
16 for self-financed home financing if the owner is not acting
17 within the regular course of business; establishing reporting
18 requirements; and authorizing the Division of Financial
19 Institutions to impose civil administrative penalties for
20 failure to timely report.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §31-17-1 of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that §31-17A-2 of said code be
24 amended and reenacted, all to read as follows:

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

3 **§31-17-1. Definitions and general provisions.**

4 As used in this article:

5 (a) "Additional charges" means every type of charge arising
6 out of the making or acceptance of a primary or subordinate
7 mortgage loan, except finance charges, including, but not limited
8 to, official fees and taxes, reasonable closing costs and certain
9 documentary charges and insurance premiums and other charges which
10 definition is to be read in conjunction with and permitted by
11 section one hundred nine, article three, chapter forty-six-a of
12 this code;

13 (b) "Affiliated" means persons under the same ownership or
14 management control. As to corporations, limited liability
15 companies or partnerships, where common owners manage or control a
16 majority of the stock, membership interests or general partnership
17 interests of one or more such corporations, limited liability
18 companies or partnerships, those persons are considered affiliated.
19 In addition, persons under the ownership or management control of
20 the members of an immediate family shall be considered affiliated.
21 For purposes of this section, "immediate family" means mother,
22 stepmother, father, stepfather, sister, stepsister, brother,
23 stepbrother, spouse, child and grandchildren;

24 (c) "Amount financed" means the total of the following items

1 to the extent that payment is deferred:

2 (1) The cash price of the goods, services or interest in land,
3 less the amount of any down payment, whether made in cash or in
4 property traded in;

5 (2) The amount actually paid or to be paid by the seller
6 pursuant to an agreement with the buyer to discharge a security
7 interest in or a lien on property traded in; and

8 (3) If not included in the cash price:

9 (A) Any applicable sales, use, privilege, excise or
10 documentary stamp taxes;

11 (B) Amounts actually paid or to be paid by the seller for
12 registration, certificate of title or license fees; and

13 (C) Additional charges permitted by this article;

14 (d) "Applicant" means a person who has applied for a lender or
15 broker license;

16 (e) "Broker" means any person acting in the regular course of
17 business who, for a fee or commission or other consideration,
18 negotiates or arranges, or who offers to negotiate or arrange, or
19 originates or assigns a primary or subordinate mortgage loan
20 between a lender and a borrower. A person is considered to be
21 acting in the regular course of business if he or she negotiates or
22 arranges, or offers to negotiate or arrange, or originates,
23 processes or assigns any primary or subordinate mortgage loans in
24 any one calendar year; or if he or she seeks to charge a borrower

1 or receive from a borrower money or other valuable consideration in
2 any primary or subordinate mortgage transaction before completing
3 performance of all broker services that he or she has agreed to
4 perform for the borrower;

5 (f) "Brokerage fee" means the fee or commission or other
6 consideration charged by a broker or loan originator for the
7 services described in subdivision (e) of this section;

8 (g) "Commissioner" means the Commissioner of ~~Banking~~ Financial
9 Institutions of this state;

10 (h) "Finance charge" means the sum of all interest and similar
11 charges payable directly or indirectly by the debtor imposed or
12 collected by the lender incident to the extension of credit as
13 coextensive with the definition of "loan finance charge" set forth
14 in section one hundred two, article one, chapter forty-six-a of
15 this code;

16 (i) "Lender" means any person who makes or offers to make or
17 accepts or offers to accept or purchases or services any primary or
18 subordinate mortgage loan in the regular course of business. A
19 person is considered to be acting in the regular course of business
20 if he or she makes or accepts, or offers to make or accept, any
21 primary or subordinate mortgage loans in any one calendar year.

22 "Lender" does not include any person who does not currently
23 have and has never held a residential mortgage lender license in
24 this or in any other state and who makes no more than three primary

1 or subordinate mortgage loans in any calendar year to purchasers of
2 any dwelling owned by that person: *Provided*, That the person is
3 required to report within thirty days of the date of the loan any
4 such mortgage loan to the Division of Financial Institutions on a
5 form available from the division upon request. Failure to timely
6 report as required by this subsection may result in imposition by
7 the commissioner of a civil administrative penalty of up to \$250;

8 (j) "Licensee" means any person duly licensed by the
9 commissioner under the provisions of this article or article
10 seventeen-a of this chapter as a lender, broker or mortgage loan
11 originator;

12 (k) "Nationwide Mortgage Licensing System and Registry" means
13 a mortgage licensing system developed and maintained by the
14 Conference of State Bank Supervisors and the American Association
15 of Residential Mortgage Regulators for the licensing and
16 registration of licensed mortgage brokers and lenders licensed
17 under this article and mortgage loan originators licensed under
18 article seventeen-a of this chapter;

19 (l) "Person" means an individual, partnership, association,
20 trust, corporation or any other legal entity, or any combination
21 thereof;

22 (m) "Primary mortgage loan" means any loan primarily for
23 personal, family or household use that is secured by a mortgage,
24 deed of trust or other equivalent consensual security interest on

1 a dwelling as defined in ~~Section 103(v)~~ Section 103(w) of the Truth
2 in Lending Act or residential real estate upon which is constructed
3 or intended to be constructed a dwelling;

4 (n) "Servicing" or "servicing a residential mortgage loan"
5 means through any medium or mode of communication the collection or
6 remittance for, or the right or obligation to collect or remit for
7 another lender, note owner or noteholder, payments of principal,
8 interest, including sales finance charges in a consumer credit
9 sale, and escrow items as insurance and taxes for property subject
10 to a residential mortgage loan; and

11 (o) "Subordinate mortgage loan" means any loan primarily for
12 personal, family or household use that is secured by a mortgage,
13 deed of trust or other equivalent consensual security interest on
14 a dwelling as defined in ~~Section 103(v)~~ Section 103(w) of the Truth
15 in Lending Act or residential real estate upon which is constructed
16 or intended to be constructed a dwelling and is subject to the lien
17 of one or more prior recorded mortgages or deeds of trust.

18 **ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.**

19 **§31-17A-2. Definitions.**

20 As used in this article:

21 (a) "Commissioner" means the Commissioner of ~~Banking~~ Financial
22 Institutions of this state;

23 (b) "Depository institution" has the same meaning as in
24 Section three of the Federal Deposit Insurance Act and includes any

1 federally insured credit union; and

2 (c) "Division" means the West Virginia Division of ~~Banking~~
3 Financial Institutions;

4 (d) "Federal banking agencies" means the Board of Governors of
5 the Federal Reserve System, the Comptroller of the Currency, the
6 Director of the Office of Thrift Supervision, the National Credit
7 Union Administration and the Federal Deposit Insurance Corporation;

8 (e) "Immediate family member" means a spouse, child, sibling,
9 parent, grandparent or grandchild. This includes stepparents,
10 stepchildren, stepsiblings and adoptive relationships;

11 (f) "Individual" means a natural person; and

12 (g) "Loan processor or underwriter" means an individual who
13 performs clerical or support duties as an employee at the direction
14 of and subject to the supervision and instruction of a person
15 licensed or exempt from licensing under article seventeen of this
16 chapter.

17 (1) For purposes of this paragraph, "clerical or support
18 duties" may include subsequent to the receipt of an application:

19 (A) The receipt, collection, distribution and analysis of
20 information common for the processing or underwriting of a
21 residential mortgage loan; and

22 (B) Communicating with a consumer to obtain the information
23 necessary for the processing or underwriting of a loan, to the
24 extent that such communication does not include offering or

1 negotiating loan rates or terms, or counseling consumers about
2 residential mortgage loan rates or terms; or

3 (2) An individual engaging solely in loan processor or
4 underwriter activities shall not represent to the public, through
5 advertising or other means of communicating or providing
6 information, including the use of business cards, stationery,
7 brochures, signs, rate lists or other promotional items, that such
8 individual can or will perform any of the activities of a mortgage
9 loan originator;

10 (h) "Mortgage loan originator" means an individual who for
11 compensation or gain or in the expectation of compensation or gain
12 takes a residential mortgage loan application or offers or
13 negotiates terms of a residential mortgage loan and is sponsored by
14 a mortgage lender, broker or regulated consumer lender licensed by
15 the Division of ~~Banking~~ Financial Institutions.

16 "Mortgage loan originator" does not include:

17 (1) An individual engaged solely as a loan processor or
18 underwriter except as otherwise provided in section three of this
19 article;

20 (2) A person or entity who does not currently have and has
21 never held a residential mortgage loan originator license in this
22 or any other state and who acts as a mortgage loan originator on no
23 more than three residential mortgage loans to purchasers of any
24 dwelling owned by the person or entity in any calendar year:

1 Provided, That the person or entity is required to report any such
2 loan within thirty days of the date of the loan to the Division of
3 Financial Institutions on a form available from the division upon
4 request. Failure to timely report as required by this subsection
5 may result in imposition by the commissioner of a civil
6 administrative penalty of up to \$250;

7 ~~(2)~~ (3) A person or entity that only performs real estate
8 brokerage activities and is licensed or registered in accordance
9 with West Virginia law, unless the person or entity is compensated
10 by a lender, a mortgage broker or other mortgage loan originator or
11 by any agent of such lender, mortgage broker or other mortgage loan
12 originator;

13 ~~(3)~~ (4) A person or entity solely involved in extensions of
14 credit relating to timeshare plans, as that term is defined in
15 Section 101(53D) of Title 11, United States Code; or

16 ~~(4)~~ (5) A manufactured or modular home retailer employee who
17 performs purely administrative or clerical tasks and who receives
18 only the customary salary or commission from the employer in
19 connection with the sales transaction;

20 (i) "Real estate brokerage activity" means any activity that
21 involves offering or providing real estate brokerage services to
22 the public, including:

23 (1) Acting as a real estate salesperson or real estate broker
24 for a buyer, seller, lessor or lessee of real property;

1 (2) Bringing together parties interested in the sale,
2 purchase, lease, rental or exchange of real property;

3 (3) Negotiating, on behalf of any party, any portion of a
4 contract relating to the sale, purchase, lease, rental or exchange
5 of real property other than in connection with providing financing
6 with respect to any such transaction;

7 (4) Engaging in any activity for which a person engaged in the
8 activity is required to be registered or licensed as a real estate
9 agent or real estate broker under any applicable law; and

10 (5) Offering to engage in any activity, or act in any
11 capacity, described in subsection (1), (2), (3) or (4) of this
12 section;

13 (j) "Nationwide Mortgage Licensing System and Registry" means
14 a mortgage licensing system developed and maintained by the
15 Conference of State Bank Supervisors and the American Association
16 of Residential Mortgage Regulators for the licensing and
17 registration of mortgage brokers and lenders licensed pursuant to
18 article seventeen of this chapter and mortgage loan originators
19 licensed pursuant to this article;

20 (k) "Nontraditional mortgage product" means any mortgage
21 product other than a fixed rate mortgage;

22 (l) "Person" means a natural person, corporation, company,
23 limited liability company, partnership or association;

24 (m) "Registered mortgage loan originator" means any individual

1 who:

2 (1) Meets the definition of mortgage loan originator and is an
3 employee of:

4 (A) A depository institution;

5 (B) A subsidiary that is:

6 (i) Owned and controlled by a depository institution; and

7 (ii) Regulated by a federal banking agency; or

8 (C) An institution regulated by the Farm Credit
9 Administration; and

10 (2) Is registered with, and maintains a unique identifier
11 through, the Nationwide Mortgage Licensing System and Registry;

12 (n) "Residential mortgage loan" means any loan primarily for
13 personal, family or household use that is secured by a mortgage,
14 deed of trust or other equivalent consensual security interest on
15 a dwelling as defined in Section ~~103(v)~~ 103(w) of the Truth in
16 Lending Act or residential real estate upon which is constructed or
17 intended to be constructed a dwelling;

18 (o) "Residential real estate" means any real property located
19 in West Virginia, upon which is constructed or intended to be
20 constructed a dwelling; and

21 (p) "Unique identifier" means a number or other identifier
22 assigned by protocols established by the Nationwide Mortgage
23 Licensing System and Registry.

(NOTE: The purpose this bill is to permit certain owners of residential real estate a limited exemption from the licensing requirements of the West Virginia Residential Mortgage Lender, Broker and Servicer Act and the West Virginia Safe Mortgage Licensing Act for self-financed home financing. The bill grants that exemption to owners of residential real estate who in any calendar year period make no more than three residential mortgage loans to purchasers of residential real estate for all or part of the purchase price of the property against which the mortgage is secured. The owner must report the loan within 30 days to the Division of Financial Institutions and failure to timely report can result in the imposition of a \$250 civil administrative penalty.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)