

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 383

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

[Originating in the Committee on Banking and Insurance;
reported February 7, 2014.]

A BILL to amend and reenact §31-17-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-17A-2 of said code, all relating to permitting certain owners of residential real estate limited exemptions 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 if the owner is not acting within the regular course of business; establishing reporting requirements; and authorizing the Division of Financial Institutions to impose civil administrative penalties for failure to timely report.

Be it enacted by the Legislature of West Virginia:

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

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

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

1 As used in this article:

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

10 (b) “Affiliated” means persons under the same ownership
11 or management control. As to corporations, limited liability

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

22 (c) “Amount financed” means the total of the following
23 items to the extent that payment is deferred:

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

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

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

31 (A) Any applicable sales, use, privilege, excise or
32 documentary stamp taxes;

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

35 (C) Additional charges permitted by this article;

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

38 (e) "Broker" means any person acting in the regular
39 course of business who, for a fee or commission or other
40 consideration, negotiates or arranges, or who offers to
41 negotiate or arrange, or originates or assigns a primary or
42 subordinate mortgage loan between a lender and a borrower.

43 A person is considered to be acting in the regular course of
44 business if he or she negotiates or arranges, or offers to
45 negotiate or arrange, or originates, processes or assigns any
46 primary or subordinate mortgage loans in any one calendar
47 year; or if he or she seeks to charge a borrower or receive
48 from a borrower money or other valuable consideration in
49 any primary or subordinate mortgage transaction before

50 completing performance of all broker services that he or she
51 has agreed to perform for the borrower;

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

55 (g) "Commissioner" means the Commissioner of ~~Banking~~
56 Financial Institutions of this state;

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

63 (i) "Lender" means any person who makes or offers to
64 make or accepts or offers to accept or purchases or services
65 any primary or subordinate mortgage loan in the regular
66 course of business. A person is considered to be acting in the
67 regular course of business if he or she makes or accepts, or

68 offers to make or accept, any primary or subordinate
69 mortgage loans in any one calendar year.

70 “Lender” does not include any person who does not
71 currently have and has never held a residential mortgage
72 lender license in this or in any other state and who makes no
73 more than three primary or subordinate mortgage loans in
74 any calendar year to purchasers of any dwelling owned by
75 that person: *Provided*, That the person is required to report
76 within thirty days of the date of the loan any such mortgage
77 loan to the Division of Financial Institutions on a form
78 available from the division upon request. Failure to timely
79 report as required by this subsection may result in imposition
80 by the commissioner of a civil administrative penalty of up
81 to \$250;

82 (j) “Licensee” means any person duly licensed by the
83 commissioner under the provisions of this article or article
84 seventeen-a of this chapter as a lender, broker or mortgage
85 loan originator;

86 (k) “Nationwide Mortgage Licensing System and
87 Registry” means a mortgage licensing system developed and
88 maintained by the Conference of State Bank Supervisors and
89 the American Association of Residential Mortgage
90 Regulators for the licensing and registration of licensed
91 mortgage brokers and lenders licensed under this article and
92 mortgage loan originators licensed under article seventeen-a
93 of this chapter;

94 (l) “Person” means an individual, partnership,
95 association, trust, corporation or any other legal entity, or any
96 combination thereof;

97 (m) “Primary mortgage loan” means any loan primarily
98 for personal, family or household use that is secured by a
99 mortgage, deed of trust or other equivalent consensual
100 security interest on a dwelling as defined in ~~Section 103(v)~~
101 Section 103(w) of the Truth in Lending Act or residential real
102 estate upon which is constructed or intended to be
103 constructed a dwelling;

104 (n) “Servicing” or “servicing a residential mortgage loan”
105 means through any medium or mode of communication the
106 collection or remittance for, or the right or obligation to
107 collect or remit for another lender, note owner or noteholder,
108 payments of principal, interest, including sales finance
109 charges in a consumer credit sale, and escrow items as
110 insurance and taxes for property subject to a residential
111 mortgage loan; and

112 (o) “Subordinate mortgage loan” means any loan
113 primarily for personal, family or household use that is
114 secured by a mortgage, deed of trust or other equivalent
115 consensual security interest on a dwelling as defined in
116 ~~Section 103(v)~~ Section 103(w) of the Truth in Lending Act
117 or residential real estate upon which is constructed or
118 intended to be constructed a dwelling and is subject to the
119 lien of one or more prior recorded mortgages or deeds of
120 trust.

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

§31-17A-2. Definitions.

1 As used in this article:

2 (a) “Commissioner” means the Commissioner of ~~Banking~~
3 Financial Institutions of this state;

4 (b) “Depository institution” has the same meaning as in
5 Section three of the Federal Deposit Insurance Act and
6 includes any federally insured credit union; and

7 (c) “Division” means the West Virginia Division of
8 ~~Banking~~ Financial Institutions;

9 (d) “Federal banking agencies” means the Board of
10 Governors of the Federal Reserve System, the Comptroller of
11 the Currency, the Director of the Office of Thrift
12 Supervision, the National Credit Union Administration and
13 the Federal Deposit Insurance Corporation;

14 (e) “Immediate family member” means a spouse, child,
15 sibling, parent, grandparent or grandchild. This includes
16 stepparents, stepchildren, stepsiblings and adoptive
17 relationships;

18 (f) “Individual” means a natural person; and

19 (g) “Loan processor or underwriter” means an individual
20 who performs clerical or support duties as an employee at the
21 direction of and subject to the supervision and instruction of
22 a person licensed or exempt from licensing under article
23 seventeen of this chapter.

24 (1) For purposes of this paragraph, “clerical or support
25 duties” may include subsequent to the receipt of an
26 application:

27 (A) The receipt, collection, distribution and analysis of
28 information common for the processing or underwriting of a
29 residential mortgage loan; and

30 (B) Communicating with a consumer to obtain the
31 information necessary for the processing or underwriting of
32 a loan, to the extent that such communication does not
33 include offering or negotiating loan rates or terms, or
34 counseling consumers about residential mortgage loan rates
35 or terms; or

36 (2) An individual engaging solely in loan processor or
37 underwriter activities shall not represent to the public,

38 through advertising or other means of communicating or
39 providing information, including the use of business cards,
40 stationery, brochures, signs, rate lists or other promotional
41 items, that such individual can or will perform any of the
42 activities of a mortgage loan originator;

43 (h) “Mortgage loan originator” means an individual who
44 for compensation or gain or in the expectation of
45 compensation or gain takes a residential mortgage loan
46 application or offers or negotiates terms of a residential
47 mortgage loan and is sponsored by a mortgage lender, broker
48 or regulated consumer lender licensed by the Division of
49 Banking Financial Institutions.

50 “Mortgage loan originator” does not include:

51 (1) An individual engaged solely as a loan processor or
52 underwriter except as otherwise provided in section three of
53 this article;

54 (2) A person or entity who does not currently have and
55 has never held a residential mortgage loan originator license
56 in this or any other state and who acts as a mortgage loan

57 originator on no more than three residential mortgage loans
58 to purchasers of any dwelling owned by the person or entity
59 in any calendar year: *Provided*, That the person or entity is
60 required to report any such loan within thirty days of the date
61 of the loan to the Division of Financial Institutions on a form
62 available from the division upon request. Failure to timely
63 report as required by this subsection may result in imposition
64 by the commissioner of a civil administrative penalty of up
65 to \$250;

66 ~~(2)~~ (3) A person or entity that only performs real estate
67 brokerage activities and is licensed or registered in
68 accordance with West Virginia law, unless the person or
69 entity is compensated by a lender, a mortgage broker or other
70 mortgage loan originator or by any agent of such lender,
71 mortgage broker or other mortgage loan originator;

72 ~~(3)~~ (4) A person or entity solely involved in extensions of
73 credit relating to timeshare plans, as that term is defined in
74 Section 101(53D) of Title 11, United States Code; or

75 ~~(4)~~ (5) A manufactured or modular home retailer
76 employee who performs purely administrative or clerical
77 tasks and who receives only the customary salary or
78 commission from the employer in connection with the sales
79 transaction;

80 (i) “Real estate brokerage activity” means any activity
81 that involves offering or providing real estate brokerage
82 services to the public, including:

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

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

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

91 (4) Engaging in any activity for which a person engaged
92 in the activity is required to be registered or licensed as a real

93 estate agent or real estate broker under any applicable law;

94 and

95 (5) Offering to engage in any activity, or act in any

96 capacity, described in subsection (1), (2), (3) or (4) of this

97 section;

98 (j) “Nationwide Mortgage Licensing System and

99 Registry” means a mortgage licensing system developed and

100 maintained by the Conference of State Bank Supervisors and

101 the American Association of Residential Mortgage

102 Regulators for the licensing and registration of mortgage

103 brokers and lenders licensed pursuant to article seventeen of

104 this chapter and mortgage loan originators licensed pursuant

105 to this article;

106 (k) “Nontraditional mortgage product” means any

107 mortgage product other than a fixed rate mortgage;

108 (l) “Person” means a natural person, corporation,

109 company, limited liability company, partnership or

110 association;

111 (m) “Registered mortgage loan originator” means any
112 individual who:

113 (1) Meets the definition of mortgage loan originator and
114 is an employee of:

115 (A) A depository institution;

116 (B) A subsidiary that is:

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

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

119 (C) An institution regulated by the Farm Credit
120 Administration; and

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

124 (n) “Residential mortgage loan” means any loan primarily
125 for personal, family or household use that is secured by a
126 mortgage, deed of trust or other equivalent consensual
127 security interest on a dwelling as defined in Section ~~103(v)~~
128 103(w) of the Truth in Lending Act or residential real estate

129 upon which is constructed or intended to be constructed a
130 dwelling;

131 (o) “Residential real estate” means any real property
132 located in West Virginia, upon which is constructed or
133 intended to be constructed a dwelling; and

134 (p) “Unique identifier” means a number or other
135 identifier assigned by protocols established by the
136 Nationwide Mortgage 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.)