

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Enrolled**

### **Senate Bill 311**

BY SENATORS SNYDER, ROMANO, GAUNCH, KESSLER

AND BLAIR

[Passed March 12, 2016; in effect 90 days from  
passage]

1 AN ACT to amend and reenact §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as  
2 amended, all relating to exceptions from certain requirements for certain mortgage  
3 modifications or refinancing loans; authorizing exception from certain requirements for  
4 mortgage modifications or refinancing loans made in participation with and in compliance  
5 with the federal Homes Affordable Modification Program or any other mortgage  
6 modification or refinancing loan eligible under any government sponsored enterprise  
7 requirements or funded through any federal or state program or litigation settlement; and  
8 allowing exceptions from nullification or actions brought for certain mortgage modifications  
9 or refinancing loans made in participation with and in compliance with the federal Homes  
10 Affordable Modification Program or any other mortgage modification or refinancing loan  
11 eligible under any government sponsored enterprise requirements or funded through any  
12 federal or state program or litigation settlement.

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

1 That §31-17-8 and §31-17-17 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted, all to read as follows:

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

**§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum  
points, fees and charges; overriding of federal limitations; limitations on lien  
documents; prohibitions on primary and subordinate mortgage loans; civil remedy.**

1 (a) The maximum rate of finance charges on or in connection with any subordinate  
2 mortgage loan may not exceed eighteen percent per year on the unpaid balance of the amount  
3 financed.

4 (b) A borrower has the right to prepay his or her debt, in whole or in part, at any time and  
5 shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees

6 and loan origination fees, which rebate shall be computed under the actuarial method.

7 (c) Except as provided by section one hundred nine, article three, chapter forty-six-a of  
8 this code and by subsection (g) of this section, no additional charges may be made, nor may any  
9 charge permitted by this section be assessed unless the loan is made: *Provided*, That in the event  
10 the loan is not made, the licensee is not required to refund an appraisal fee that is collected from  
11 a loan applicant by the licensee and paid to an unrelated third-party appraiser unless the fee is  
12 required to be refunded pursuant to federal law.

13 (d) Where loan origination fees, investigation fees or points have been charged by the  
14 licensee, the charges may not be imposed again in any refinancing of that loan or any additional  
15 loan on that property made within twenty-four months thereof, unless the new loan has a  
16 reasonable, tangible net benefit to the borrower considering all of the circumstances, including  
17 the terms of both the new and the refinanced loans, the cost of the new loan and the borrower's  
18 circumstances. The licensee shall document this benefit in writing on a form prescribed by the  
19 commissioner and maintain the documentation in the loan file. To the extent this subdivision  
20 overrides the preemption on limiting points and other charges on first lien residential mortgage  
21 loans contained in the United States Depository Institutions Deregulation and Monetary Control  
22 Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in this section apply.

23 (e) Notwithstanding other provisions of this section, a delinquent charge or late charge  
24 may be charged on any installment made ten or more days after the regularly scheduled due date  
25 in accordance with section one hundred twelve or one hundred thirteen, article three, chapter  
26 forty-six-a of this code, whichever is applicable. The charge may be made only once on any one  
27 installment during the term of the primary or subordinate mortgage loan.

28 (f) Hazard insurance may be required by the lender. The charges for any insurance shall  
29 not exceed the standard rate approved by the Insurance Commissioner for the insurance. Proof  
30 of all insurance in connection with primary and subordinate mortgage loans subject to this article  
31 shall be furnished to the borrower within thirty days from and after the date of application therefor

32 by the borrower.

33 (g) Except for fees for services provided by unrelated third parties for appraisals,  
34 inspections, title searches and credit reports, no application fee is allowed whether or not the  
35 mortgage loan is consummated; however, the borrower may be required to reimburse the licensee  
36 for actual expenses incurred by the licensee in a purchase money transaction after acceptance  
37 and approval of a mortgage loan proposal made in accordance with the provisions of this article  
38 which is not consummated because of:

39 (1) The borrower's willful failure to close the loan; or

40 (2) The borrower's false or fraudulent representation of a material fact which prevents  
41 closing of the loan as proposed.

42 (h) A licensee may not make, offer to make, accept or offer to accept any primary or  
43 subordinate mortgage loan except on the terms and conditions authorized in this article.

44 (i) A licensee may not induce or permit any borrower to become obligated to the licensee  
45 under this article, directly or contingently, or both, under more than one subordinate mortgage  
46 loan at the same time for the purpose or with the result of obtaining greater charges than would  
47 otherwise be permitted under the provisions of this article.

48 (j) An instrument evidencing or securing a primary or subordinate mortgage loan may not  
49 contain:

50 (1) A power of attorney to confess judgment;

51 (2) A provision whereby the borrower waives any rights accruing to him or her under the  
52 provisions of this article;

53 (3) A requirement that more than one installment be payable in any one installment period,  
54 or that the amount of any installment be greater or less than that of any other installment, except  
55 for the final installment which may be in a lesser amount, or unless the loan is structured as a  
56 revolving line of credit having no set final payment date: *Provided*, That this prohibition does not  
57 apply to any mortgage modification or refinancing loan made in participation with and in

58 compliance with the federal Making Homes Affordable program, or any other mortgage  
59 modification or refinancing loan eligible under any government sponsored enterprise  
60 requirements or funded through any federal or state program or litigation settlement;

61 (4) An assignment of or order for the payment of any salary, wages, commissions or other  
62 compensation for services, or any part thereof, earned or to be earned;

63 (5) A requirement for compulsory arbitration which does not comply with federal law; or

64 (6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be  
65 given a copy of every signed document executed by the borrower at the time of closing.

66 (k) A licensee may not charge a borrower or receive from a borrower money or other  
67 valuable consideration as compensation before completing performance of all services the  
68 licensee has agreed to perform for the borrower unless the licensee also registers and complies  
69 with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of  
70 this code, including all additional bonding requirements as may be established therein.

71 (l) A licensee may not make or broker revolving loans secured by a primary or subordinate  
72 mortgage lien for the retail purchase of consumer goods and services by use of a lender credit  
73 card.

74 (m) In making any primary or subordinate mortgage loan, a licensee may not, and a  
75 primary or subordinate mortgage lending transaction may not, contain terms which:

76 (1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess  
77 of the fee that has been or will be remitted to the attorney; collect a fee for a product or service  
78 where the product or service is not actually provided; misrepresent the amount charged by or paid  
79 to a third party for a product or service; or collect duplicate fee or points to act as both broker and  
80 lender for the same mortgage loan, however, fees and points may be divided between the broker  
81 and the lender as they agree, but may not exceed the total charges otherwise permitted under  
82 this article: *Provided*, That the fact of any fee, point or compensation is disclosed to the borrower  
83 consistent with the solicitation representation made to the borrower;

84           (2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the  
85 purpose of influencing the independent judgment of the appraiser with respect to the value of real  
86 estate that is to be covered by a deed of trust or is being offered as security according to an  
87 application for a primary or subordinate mortgage loan;

88           (3) Make or assist in making any primary or subordinate mortgage loan with the intent that  
89 the loan will not be repaid and that the lender will obtain title to the property through foreclosure:  
90 *Provided*, That this subdivision shall not apply to reverse mortgages obtained under the provisions  
91 of article twenty-four, chapter forty-seven of this code;

92           (4) Require the borrower to pay, in addition to any periodic interest, combined fees,  
93 compensation or points of any kind to the lender and broker to arrange, originate, evaluate,  
94 maintain or service a loan secured by any encumbrance on residential property that exceed, in  
95 the aggregate, six percent of the loan amount financed, including any yield spread premium paid  
96 by the lender to the broker: *Provided*, That reasonable closing costs, as defined in section one  
97 hundred two, article one, chapter forty-six-a of this code, payable to unrelated third parties may  
98 not be included within this limitation: *Provided, however*, That no yield spread premium is  
99 permitted for any loan for which the annual percentage rate exceeds eighteen percent per year  
100 on the unpaid balance of the amount financed: *Provided further*, That if no yield spread premium  
101 is charged, the aggregate of fees, compensation or points can be no greater than five percent of  
102 the loan amount financed. The financing of the fees and points are permissible and, where  
103 included as part of the finance charge, does not constitute charging interest on interest. To the  
104 extent that this section overrides the preemption on limiting points and other charges on first lien  
105 residential mortgage loans contained in the United States Depository Institutions Deregulation  
106 and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in  
107 this section apply;

108           (5) Secure a primary or subordinate mortgage loan by any security interest in personal  
109 property unless the personal property is affixed to the residential dwelling or real estate;

110 (6) Allow or require a primary or subordinate mortgage loan to be accelerated because of  
111 a decrease in the market value of the residential dwelling that is securing the loan;

112 (7) Require terms of repayment which do not result in continuous monthly reduction of the  
113 original principal amount of the loan: *Provided*, That the provisions of this subdivision do not apply  
114 to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code,  
115 home equity, open-end lines of credit, bridge loans used in connection with the purchase or  
116 construction of a new residential dwelling or commercial loans for multiple residential purchases;

117 (8) Secure a primary or subordinate mortgage loan in a principal amount that, when added  
118 to the aggregate total of the outstanding principal balances of all other primary or subordinate  
119 mortgage loans secured by the same property, exceeds the fair market value of the property on  
120 the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender  
121 may rely upon a bona fide written appraisal of the property made by an independent third-party  
122 appraiser, duly licensed or certified by the West Virginia Real Estate Appraiser Licensing and  
123 Certification Board and prepared in compliance with the uniform standards of professional  
124 appraisal practice: *Provided*, That this prohibition does not apply to any mortgage modification  
125 or refinancing loan made in participation with and in compliance with the federal Making Homes  
126 Affordable program, or any other mortgage modification or refinancing loan eligible under any  
127 government sponsored enterprise requirements or funded through any federal or state program  
128 or litigation settlement;

129 (9) Advise or recommend that the consumer not make timely payments on an existing loan  
130 preceding loan closure of a refinancing transaction; or

131 (10) Knowingly violate any provision of any other applicable state or federal law regulating  
132 primary or subordinate mortgage loans, including, without limitation, chapter forty-six-a of this  
133 code.

**§31-17-17. Loans made in violation of this article void; agreements to waive article void.**

134 (a) If any primary or subordinate mortgage loan is made in willful violation of the provisions

135 of this article, except as a result of a bona fide error, such loan may be canceled by a court of  
136 competent jurisdiction: *Provided*, That it may not be construed to have been a willful violation of  
137 the provisions of this article if the violation is due to a violation of subdivision (3), subsection (j) or  
138 subdivision (8), subsection (m), section eight of this article for a mortgage modification or  
139 refinancing loan made after May 1, 2009, in participation with and in compliance with the federal  
140 Making Homes Affordable program, or any other mortgage modification or refinancing loan  
141 eligible under any government sponsored enterprise requirements or funded through any federal  
142 or state program or litigation settlement.

143 (b) Any agreement whereby the borrower waives the benefits of this article shall be  
144 deemed to be against public policy and void.

145 (c) Any residential mortgage loan transaction in violation of this article shall be subject to  
146 an action, which may be brought in a circuit court having jurisdiction, by the borrower seeking  
147 damages, reasonable attorneys fees and costs: *Provided*, That this action may not be brought if  
148 the violation is due to a violation of subdivision (3), subsection (j) or subdivision (8), subsection  
149 (m), section eight of this article for a mortgage modification or refinancing loan made after May 1,  
150 2009, in participation with and in compliance with the federal Making Homes Affordable program,  
151 or any other mortgage modification or refinancing loan eligible under any government sponsored  
152 enterprise requirements or funded through any federal or state program or litigation settlement.

153 (d) A licensee who, when acting in good faith in a lending transaction, inadvertently and  
154 without intention, violates any provision of this article or fails to comply with any provision of this  
155 article, will be excused from such violation if within thirty days of becoming aware of such violation,  
156 or being notified of such violation, and prior to the institution of any civil action or criminal  
157 proceeding against the licensee, the licensee notifies the borrower of the violation, makes full  
158 restitution of any overcharges, and makes all other adjustments as are necessary to make the  
159 lending transaction comply with this article.