

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 311

BY SENATORS SNYDER, ROMANO, GAUNCH,

KESSLER AND BLAIR

[January 18, 2016;

Referred to the Committee on Government

Organization.]

1 A BILL to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating
2 to making permanent the exception allowing a mortgage modification or refinancing loan
3 to be made in participation with and in compliance with the federal Homes Affordable
4 Modification Program, a part of the federal Making Home Affordable program, or any other
5 mortgage modification or refinancing loan funded through any other federal or state
6 program or litigation settlement, when the aggregate total of the outstanding principal
7 balances of all other primary or subordinate mortgage loans secured by the same property
8 exceeds the fair market value of the property.

Be it enacted by the Legislature of West Virginia:

1 That §31-17-8 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted 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 ~~shall have~~ has the right to prepay his or her debt, in whole or in part, at any
5 time and shall receive a rebate for any unearned finance charge, exclusive of any points,
6 investigation fees and loan origination fees, which rebate shall be computed under the actuarial
7 method.

8 (c) Except as provided by section one hundred nine, article three, chapter forty-six-a of
9 this code and by subsection (g) of this section, no additional charges may be made, nor may any

10 charge permitted by this section be assessed unless the loan is made: *Provided*, That in the event
11 the loan is not made, the licensee is not required to refund an appraisal fee that is collected from
12 a loan applicant by the licensee and paid to an unrelated third-party appraiser unless the fee is
13 required to be refunded pursuant to federal law.

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

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

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

34 (g) Except for fees for services provided by unrelated third parties for appraisals,
35 inspections, title searches and credit reports, no application fee ~~may be~~ is allowed whether or not

36 the mortgage loan is consummated; however, the borrower may be required to reimburse the
37 licensee for actual expenses incurred by the licensee in a purchase money transaction after
38 acceptance and approval of a mortgage loan proposal made in accordance with the provisions of
39 this article which is not consummated because of:

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

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

43 (h) ~~No~~ A licensee ~~shall~~ may not make, offer to make, accept or offer to accept any primary
44 or subordinate mortgage loan except on the terms and conditions authorized in this article.

45 (i) ~~No~~ A licensee ~~shall~~ may not induce or permit any borrower to become obligated to the
46 licensee under this article, directly or contingently, or both, under more than one subordinate
47 mortgage loan at the same time for the purpose or with the result of obtaining greater charges
48 than would otherwise be permitted under the provisions of this article.

49 (j) ~~No~~ An instrument evidencing or securing a primary or subordinate mortgage loan ~~shall~~
50 may not contain:

51 (1) ~~Any~~ A power of attorney to confess judgment;

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

54 (3) ~~Any~~ A requirement that more than one installment be payable in any one installment
55 period, or that the amount of any installment be greater or less than that of any other installment,
56 except for the final installment which may be in a lesser amount, or unless the loan is structured
57 as a revolving line of credit having no set final payment date;

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

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

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

63 (k) ~~No~~ A licensee ~~shall~~ may not charge a borrower or receive from a borrower money or
64 other valuable consideration as compensation before completing performance of all services the
65 licensee has agreed to perform for the borrower unless the licensee also registers and complies
66 with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of
67 this code, including all additional bonding requirements as may be established therein.

68 (l) ~~No~~ A licensee ~~shall~~ may not make or broker revolving loans secured by a primary or
69 subordinate mortgage lien for the retail purchase of consumer goods and services by use of a
70 lender credit card.

71 (m) In making any primary or subordinate mortgage loan, ~~no~~ a licensee may not, and ~~no~~
72 a primary or subordinate mortgage lending transaction may not, contain terms which:

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

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

85 (3) Make or assist in making any primary or subordinate mortgage loan with the intent that
86 the loan will not be repaid and that the lender will obtain title to the property through foreclosure:

87 *Provided*, That this subdivision shall not apply to reverse mortgages obtained under the provisions
88 of article twenty-four, chapter forty-seven of this code;

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

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

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

109 (7) Require terms of repayment which do not result in continuous monthly reduction of the
110 original principal amount of the loan: *Provided*, That the provisions of this subdivision ~~may~~ do not
111 apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this
112 code, home equity, open-end lines of credit, bridge loans used in connection with the purchase

113 or construction of a new residential dwelling or commercial loans for multiple residential
114 purchases;

115 (8) Secure a primary or subordinate mortgage loan in a principal amount that, when added
116 to the aggregate total of the outstanding principal balances of all other primary or subordinate
117 mortgage loans secured by the same property, exceeds the fair market value of the property on
118 the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender
119 may rely upon a bona fide written appraisal of the property made by an independent third-party
120 appraiser, duly licensed or certified by the West Virginia Real Estate Appraiser Licensing and
121 Certification Board and prepared in compliance with the uniform standards of professional
122 appraisal practice: *Provided*, That commencing January 1, 2012, ~~and continuing until January 1,~~
123 ~~2015~~, this prohibition does not apply to any mortgage modification or refinancing loan made in
124 participation with and in compliance with the federal Homes Affordable Modification Program, a
125 part of the federal Making Home Affordable program, or any other mortgage modification or
126 refinancing loan funded through any other federal or state program or litigation settlement;

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

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

NOTE: The purpose of this bill is to make permanent the exception allowing a mortgage modification or refinancing loan to be made in participation with and in compliance with the federal Homes Affordable Modification Program, a part of the federal Making Home Affordable program, or any other mortgage modification or refinancing loan funded through any other federal or state program or litigation settlement, when the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property exceeds the fair market value of the property.

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