

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 613**

BY SENATORS AZINGER, OLIVERIO, PLYMALE, AND

NELSON

[Introduced January 31, 2024; referred  
to the Committee on Banking and Insurance]



1 A BILL to amend and reenact §31-17-1, §31-17-3, §31-17-4, §31-17-6, §31-17-7, and §31-17-11  
2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a  
3 new section, designated §31-17-4a; and to amend said code by adding thereto a new  
4 section, designated §31-17A-9a, all relating to the licensure and regulation of mortgage  
5 brokers, lenders, and loan originators; updating definitions; eliminating outdated  
6 provisions; authorizing emergency rulemaking; permitting the Commissioner of Financial  
7 Institutions to participate in the multistate licensing and examination process; updating net  
8 worth requirements to use generally accepted accounting principles; providing information  
9 requirements for a change in control and updating the change in control process;  
10 specifying requirements for individuals in control of a licensee or applicant; confirming  
11 confidentiality of examination and licensee information but allowing release of aggregate  
12 data; permitting loan originators to conduct work at their residence if certain requirements  
13 are met; and making technical corrections.

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

**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 arising out of the making or  
3 acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not  
4 limited to, official fees and taxes, reasonable closing costs and certain documentary charges and  
5 insurance premiums and other charges, which definition is to be read in conjunction with and  
6 permitted by §46A-3-109 of this code;

7 ~~(b) "Affiliated" means persons under the same ownership or management control. As to~~  
8 ~~corporations, limited liability companies or partnerships, where common owners manage or~~

9 ~~control a majority of the stock, membership interests or general partnership interests of one or~~  
10 ~~more such corporations, limited liability companies or partnerships, those persons are considered~~  
11 ~~affiliated. In addition, persons under the ownership or management control of the members of an~~  
12 ~~immediate family shall be considered affiliated. For purposes of this section, "immediate family"~~  
13 ~~means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse,~~  
14 ~~child and grandchildren~~

15 ~~(e)~~(b) "Amount financed" means the total of the following items to the extent that payment  
16 is deferred:

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

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

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

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

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

25 (C) Additional charges permitted by this article;

26 ~~(d)~~(c) "Applicant" means a person who has applied for a lender or broker license;

27 ~~(e)~~(d) "Broker" means any person acting in the regular course of business who, for a fee  
28 or commission or other consideration, negotiates or arranges, or who offers to negotiate or  
29 arrange, or originates or assigns a primary or subordinate mortgage loan between a lender and  
30 a borrower. A person is considered to be acting in the regular course of business if he or she  
31 negotiates or arranges, or offers to negotiate or arrange, or originates, processes, or assigns any  
32 primary or subordinate mortgage loans in any one calendar year; or if he or she seeks to charge  
33 a borrower, or receive from a borrower, money or other valuable consideration in any primary or

34 subordinate mortgage transaction before completing performance of all broker services that he  
35 or she has agreed to perform for the borrower;

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

38 ~~(g)~~(f) "Commissioner" means the Commissioner of Financial Institutions of this state;

39 (g) "Control" means:

40 (1)(A) The power to vote, directly or indirectly, at least 25 percent of voting shares or voting  
41 interests of a licensee or person in control of a licensee;

42 (B) The power to elect or appoint a majority of key individuals or executive officers,  
43 managers, directors, trustees, or other persons exercising managerial authority of a person in  
44 control of a licensee; or

45 (C) The power to exercise, directly or indirectly, a controlling influence over the  
46 management or policies of a licensee or person in control of a licensee.

47 (2) Rebuttable presumption of control:

48 (A) A person is presumed to exercise a controlling influence when the person holds the  
49 power to vote, directly or indirectly, at least 10 percent of outstanding voting shares or voting  
50 interests of a licensee or person in control of a licensee.

51 (B) A person presumed to exercise a controlling influence as defined in this section can  
52 rebut the presumption of control if the person is a passive investor.

53 (3) For the purposes of determining the percentage of a person controlled by any other  
54 person, the person's interest shall be aggregated with the interest of any other immediate family  
55 member, including the person's spouse, parents, children, siblings, mothers-in-law, fathers-in-  
56 law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who  
57 shares such person's home.

58 (h) "Finance charge" means the sum of all interest and similar charges payable directly or  
59 indirectly by the debtor imposed or collected by the lender incident to the extension of credit as

60 coextensive with the definition of "loan finance charge" set forth in section one hundred two, article  
61 one, chapter forty-six-a of this code;

62 (i) "Key individual" means any individual ultimately responsible for establishing or directing  
63 policies and procedures of the licensee, such as an executive officer, manager, director, or  
64 trustee.

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

70 "Lender" does not include any person who does not currently have, and has never held,  
71 a residential mortgage lender license in this, or in any other state, and who makes no more than  
72 three primary or subordinate mortgage loans in any calendar year to purchasers of any dwelling  
73 owned by that person: *Provided*, That the person is required to report within 30 days of the date  
74 of the loan, any such mortgage loan to the Division of Financial Institutions, on a form available  
75 from the division upon request. Failure to timely report as required by this subsection may result  
76 in imposition by the commissioner of a civil administrative penalty of up to \$250;

77 ~~(j)~~ (k) "Licensee" means any person duly licensed by the commissioner under the  
78 provisions of this article or §31-17A-1 *et seq.* of this code as a lender, broker, or mortgage loan  
79 originator;

80 ~~(k)~~ (l) "Nationwide Mortgage Multistate Licensing System and Registry" means a mortgage  
81 licensing system developed and maintained by the Conference of State Bank Supervisors and  
82 the American Association of Residential Mortgage Regulators for the licensing and registration of  
83 licensed mortgage brokers and lenders licensed under this article and mortgage loan originators  
84 licensed under §31-17A-1 *et seq.* of this code;

85           ~~(l)~~(m) "Person" means an individual, partnership, association, trust, corporation, or any  
86 other legal entity, or any combination thereof;

87           ~~(m)~~(n) "Primary mortgage loan" means any loan primarily for personal, family, or  
88 household use that is secured by a mortgage, deed of trust or other equivalent consensual  
89 security interest, on a dwelling as defined in Section 103(w) of the Truth in Lending Act or  
90 residential real estate upon which is constructed, or intended to be constructed, a dwelling;

91           ~~(n)~~(o) "Servicing" or "servicing a residential mortgage loan" means, through any medium  
92 or mode of communication, the collection or remittance for, or the right or obligation to collect or  
93 remit for another lender, note owner or noteholder, payments of principal, interest, including sales  
94 finance charges in a consumer credit sale, and escrow items as insurance and taxes for property  
95 subject to a residential mortgage loan; and

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

101           (q) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible  
102 assets, less liabilities, as determined in accordance with United States generally accepted  
103 accounting principles.

**§31-17-3. Supervision by Commissioner of ~~Banking~~ Financial Institutions; rules and regulations; personnel; participation in the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry.**

1           (a) It shall be the duty of the commissioner to enforce the provisions of this article and, to  
2 implement and make effective such provisions, he or she is hereby authorized and empowered  
3 to promulgate reasonable rules in accordance with the provisions of article three, chapter twenty-  
4 nine-a of this code and to employ such personnel as may be necessary. The commissioner may

5 promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement  
6 the amendments made during the regular session of the Legislature, 2024, as they relate to the  
7 licensure and regulation of mortgage brokers, lenders, and loan originators.

8 (b) The commissioner may participate in the Nationwide Mortgage Multistate Licensing  
9 System and Registry and permit such system to process applications for mortgage lender and  
10 mortgage broker licenses in this state and receive and maintain records related to such licenses  
11 that are allowed or required to be maintained by the commissioner. The commissioner is  
12 authorized to establish relationships or contracts with the Nationwide Mortgage Multistate  
13 Licensing System and Registry, or other entities designated by the Nationwide Mortgage  
14 Multistate Licensing System and Registry, to collect and maintain records and process transaction  
15 fees or other fees related to licensees subject to this article. The Nationwide Mortgage Multistate  
16 Licensing System and Registry shall transfer, electronically, all fees payable to the Division of  
17 Banking Financial Institutions directly to the credit of the commissioner's special revenue account  
18 with the state Treasurer.

19 ~~(c) Mortgage lenders and brokers licensed pursuant to this article shall submit renewals~~  
20 ~~for calendar year 2010 on or before October 1, 2009, in accordance with the amendments to this~~  
21 ~~article and on a form prescribed by the commissioner. Beginning January 2, 2010, licensees shall~~  
22 ~~transition to the Nationwide Mortgage Licensing System and Registry according to the terms~~  
23 ~~established by that system~~

**§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and  
reductions; per loan fee.**

1 (a) In connection with an application for licensing as a mortgage lender or mortgage  
2 broker, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Multistate Licensing  
3 System and Registry, information concerning the applicant's identity, including:



4 (1) Fingerprints for submission to the Federal Bureau of Investigation and any  
5 governmental agency or entity authorized to receive such information for a state, national and  
6 international criminal history background check; and

7 (2) Personal history and experience in a form prescribed by the Nationwide ~~Mortgage~~  
8 Multistate Licensing System and Registry and the commissioner, including the submission of  
9 authorization for the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry and the  
10 commissioner to obtain:

11 (A) An independent credit report obtained from a consumer reporting agency described in  
12 Section 603(p) of the Fair Credit Reporting Act; and

13 (B) Information related to any administrative, civil or criminal findings by any governmental  
14 jurisdiction.

15 (b) In order to reduce the points of contact which the Federal Bureau of Investigation may  
16 have to maintain for purposes of this article, the commissioner may use the Nationwide ~~Mortgage~~  
17 Multistate Licensing System and Registry or its designated vendor as a channeling agent for  
18 requesting information from, and distributing information to, the Department of Justice or any  
19 governmental agency.

20 (c) In order to reduce the points of contact which the commissioner may have to maintain,  
21 for purposes of this article, the commissioner may use the Nationwide ~~Mortgage~~ Multistate  
22 Licensing System and Registry as a channeling agent for requesting and distributing information  
23 to and from any source so directed by the commissioner.

24 (d) Application for a lender's or broker's license shall each year be submitted under oath,  
25 in the form prescribed by the commissioner. ~~and shall contain the full name and address of the~~  
26 ~~applicant and, if the applicant is a partnership, limited liability company or association, of every~~  
27 ~~member thereof, and, if a corporation, of each officer, director and owner of ten percent or more~~  
28 ~~of the capital stock thereof and further information as the commissioner may reasonably require~~  
29 Background and credit checks shall be conducted in accordance with this section for any officer,

30 ~~director or owner, directly or indirectly, of ten percent or more of the capital stock of a corporation~~  
31 ~~or any member of a limited liability or partnership with, directly or indirectly, a ten 25 percent or~~  
32 ~~greater ownership interest article.~~ Any application shall also disclose the location at which the  
33 business of lender or broker is to be conducted.

34 (e) At the time of making application for a lender's license, the applicant therefor shall:

35 (1) If a foreign corporation, submit a certificate from the Secretary of State certifying that  
36 the applicant is registered with the Secretary of State to transact business in this state;

37 (2) Submit proof that he or she has available for the operation of the business at the  
38 location specified in the application, tangible net worth of at least \$250,000 computed according  
39 to the United States generally accepted accounting principles as shown by the most recent  
40 audited financial statement;

41 (3) File ~~with the commissioner a bond~~ an electronic surety bond through the Nationwide  
42 Multistate Licensing System and Registry in favor of the state for the benefit of consumers, or for  
43 a claim by the commissioner for an unpaid civil administrative penalty, or an unpaid examination  
44 invoice in the amount of \$100,000 for licensees with West Virginia annual loan originations of \$0  
45 to \$3 million, \$150,000 for West Virginia annual loan originations greater than \$3 million and up  
46 to \$10 million, and \$250,000 for West Virginia annual loan originations over \$10 million, in a form  
47 and with conditions as the commissioner may prescribe, and executed by a surety company  
48 authorized to do business in this state: *Provided*, That lender licensees who service West Virginia  
49 mortgage loans shall file with the commissioner a bond under the same conditions listed above  
50 in the amount of \$200,000;

51 (4) Pay to the commissioner a license fee of \$1,250 plus the actual cost of fingerprint  
52 processing and the processing fees assessed by the Nationwide ~~Mortgage~~ Multistate Licensing  
53 System and Registry. If the commissioner shall determine that an investigation outside this state  
54 is required to ascertain facts or information relative to the applicant or information set forth in the  
55 application, the applicant may be required to advance sufficient funds to pay the estimated cost

56 of the investigation. An itemized statement of the actual cost of the investigation outside this state  
57 shall be furnished to the applicant by the commissioner and the applicant shall pay, or shall have  
58 returned to him or her, as the case may be, the difference between his or her payment in advance  
59 of the estimated cost and the actual cost of the investigation; and

60 (5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by  
61 a governmental authority or class action lawsuit on behalf of consumers relating to the operation  
62 of the license applicant.

63 (f) At the time of making application for a broker's license, the applicant therefor shall:

64 (1) If a foreign corporation, submit a certificate from the Secretary of State certifying that  
65 the applicant is registered with the Secretary of State to transact business in this state;

66 (2) Submit proof that he or she has available for the operation of the business at the  
67 location specified in the application, tangible net worth of at least \$10,000 computed according to  
68 the United States generally accepted accounting principles as shown by the most recent audited  
69 financial statement;

70 (3) File ~~with the commissioner a bond~~ an electronic surety bond through the Nationwide  
71 Multistate Licensing System and Registry in favor of the state for the benefit of consumers, or for  
72 a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination  
73 invoice in the amount of \$50,000 for licensees with West Virginia loan originations of \$0 to \$3  
74 million, \$75,000 for West Virginia loan originations greater than \$3 million and up to \$10 million,  
75 and \$100,000 for West Virginia loan originations over \$10 million in a form and with conditions as  
76 the commissioner may prescribe, and executed by a surety company authorized to do business  
77 in this state: *Provided*, That the bond must be in the amount of \$150,000 before a broker may  
78 participate in a table-funded residential mortgage loan;

79 (4) Pay to the commissioner a license fee of \$350 plus the actual cost of fingerprint  
80 processing and the processing fees assessed by the Nationwide ~~Mortgage~~ Multistate Licensing  
81 System and Registry; and

82 (5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by  
83 a governmental authority or class action lawsuit on behalf of consumers relating to the operation  
84 of the license applicant.

85 (g) The aggregate liability of the surety on any bond given pursuant to the provisions of  
86 this section shall in no event exceed the amount of the bond.

87 (h) Nonresident lenders and brokers licensed under this article by their acceptance of the  
88 license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the  
89 service of process pursuant to §46A-2-137 of this code and §56-3-33 of this code.

90 (i) The commissioner may elect to reduce or waive the application fees, bond amounts  
91 and net worth requirements imposed by this section for bona fide nonprofit corporations or other  
92 bona fide nonprofit business entities, including community housing development organizations,  
93 whose residential mortgage lending or brokering activities provide housing primarily to  
94 households or persons below the HUD-established median income for their area of residence.  
95 Any waiver of fees or other costs under this paragraph shall not be construed as a waiver of the  
96 duty to comply with all other provisions of this article.

97 (j) Every broker and lender licensee shall pay a fee of \$5 for each residential mortgage  
98 loan originated, made or brokered in a calendar year. This fee shall be paid annually for the benefit  
99 of the Division of ~~Banking~~ Financial Institutions and remitted ~~with the report required pursuant to~~  
100 ~~subsection (b), section eleven of this article for loans made, brokered or originated during the~~  
101 ~~previous calendar year~~ promptly through the Nationwide Multistate Licensing System and  
102 Registry when the invoice is received. If a licensee ceases operation, it shall complete the  
103 Statistical Activity Report and remit any fees due since the last reporting period when it  
104 relinquishes its license when invoiced by the Division through the Nationwide Multistate Licensing  
105 System and Registry.

106 (k) If a claim for a consumer restitution is pending on a bond required pursuant to this  
107 section when the commissioner makes a claim for a civil administrative penalty or an unpaid

108 examination invoice, the consumer claim shall be resolved before any payments may be made  
109 for an unpaid penalty or examination invoice.

**§31-17-4a. Information requirements for certain individuals and change in control.**

1 (a) Any individual in control of a licensee or applicant, any individual that seeks to acquire  
2 control of a licensee, and each key individual shall furnish to the commissioner the following items:

3 (1) The individual's fingerprints for submission to the Federal Bureau of Investigation and  
4 the commissioner for purposes of a national criminal history background check unless the person  
5 currently resides outside of the United States and has resided outside of the United States for the  
6 last 10 years;

7 (2) Personal history and experience in a form and in a medium prescribed by the  
8 commissioner, to obtain the following:

9 (A) An independent credit report from a consumer reporting agency unless the individual  
10 does not have a Social Security number, in which case this requirement shall be waived;

11 (B) Information related to any criminal convictions or pending charges; and

12 (C) Information related to any regulatory or administrative action and any civil litigation  
13 involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of  
14 fiduciary duty, or breach of contract.

15 (b) If the individual has resided outside of the United States at any time in the last 10 years,  
16 the individual shall also provide an investigative background report prepared by an independent  
17 search firm that meets the following requirements:

18 (1) At a minimum, the search firm shall:

19 (A) Demonstrate that it has sufficient knowledge, resources, and employs accepted and  
20 reasonable methodologies to conduct the research of the background report; and

21 (B) Not be affiliated with, or have an interest with, the individual it is researching.

22 (2) At a minimum, the investigative background report shall be written in the English  
23 language and shall contain the following:

24 (A) If available in the individual's current jurisdiction of residency, a comprehensive credit  
25 report, or any equivalent information obtained or generated by the independent search firm to  
26 accomplish such report, including a search of the court data in the countries, provinces, states,  
27 cities, towns, and contiguous areas where the individual resided and worked;

28 (B) Criminal records information for the past 10 years, including, but not limited to, felonies,  
29 misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities,  
30 towns, and contiguous areas where the individual resided and worked;

31 (C) Employment history;

32 (D) Media history, including an electronic search of national and local publications, wire  
33 services, and business applications; and

34 (E) Financial services-related regulatory history, including, but not limited to, money  
35 transmission, securities, banking, insurance, and mortgage-related industries.

36 (c) Any person, or group of persons acting in concert, seeking to acquire control of a  
37 licensee shall obtain the written approval of the commissioner prior to acquiring control. An  
38 individual is not deemed to acquire control of a licensee and is not subject to these acquisition of  
39 control provisions when that individual becomes a key individual in the ordinary course of  
40 business.

41 (d) A person, or group of persons acting in concert, seeking to acquire control of a licensee  
42 shall, in cooperation with the licensee, submit an application in a form and in a medium prescribed  
43 by the commissioner.

44 (e) Upon request, the commissioner may permit a licensee or the person, or group of  
45 persons acting in concert, to submit some or all information required by the commissioner without  
46 using the Nationwide Multistate Licensing System and Registry.

47 (f) The application required by this section shall include information required for any new  
48 key individuals that have not previously completed the requirements for a licensee.

49 (g) When an application for acquisition of control under this section appears to include all  
50 the items and address all of the matters that are required, the application shall be considered  
51 complete and:

52 (1) The commissioner shall approve or deny the application within 90 days after the  
53 completion date; or

54 (2) If the application is not approved or denied within 90 days after the completion date,  
55 the application is deemed approved, and the person, or group of persons acting in concert, are  
56 not prohibited from acquiring control.

57 (3) The commissioner may extend the application period for good cause.

58 (h) A determination by the commissioner that an application is complete and is accepted  
59 for processing means only that the application, on its face, appears to include all of the items and  
60 address all of the matters that are required, and is not an assessment of the substance of the  
61 application or of the sufficiency of the information provided.

62 (i) When an application is filed and considered complete, the commissioner shall  
63 investigate the financial condition and responsibility, financial and business experience,  
64 character, and general fitness of the person, or group of persons acting in concert, seeking to  
65 acquire control. The commissioner shall approve an acquisition of control pursuant to this section  
66 if the commissioner finds that all of the following conditions for the change in control have been  
67 fulfilled:

68 (1) The requirements of subsections (d) and (f) of this section have been met, as  
69 applicable; and

70 (2) The financial condition and responsibility, financial and business experience,  
71 competence, character, and general fitness of the person, or group of persons acting in concert,  
72 seeking to acquire control, and the competence, experience, character, and general fitness of the  
73 key individuals and persons that would be in control of the licensee after the acquisition of control

74 indicate that it is in the interest of the public to permit the person, or group of persons acting in  
75 concert, to control the licensee.

76 (j) If an applicant avails itself or is otherwise subject to a multistate licensing process:

77 (1) The commissioner is authorized to accept the investigation results of a lead  
78 investigative state if the lead investigative state has sufficient staffing, expertise, and minimum  
79 standards; or

80 (2) If the division is a lead investigative state, the commissioner is authorized to investigate  
81 the applicant and the time frames established by agreement through the multistate licensing  
82 process.

83 (k) The commissioner shall issue a formal written notice of the denial of an application to  
84 acquire control within 30 days of the decision to deny the application. The commissioner shall set  
85 forth in the notice of denial the specific reasons for the denial of the application. An applicant  
86 whose application is denied under this section may appeal the denial using the procedures set  
87 forth in §31-17-14 of this code.

88 (l) The requirements of subsections (c) and (d) of this section do not apply to any of the  
89 following:

90 (1) A person that acts as a proxy for the sole purpose of voting at a designated meeting  
91 of the shareholders or holders of voting shares or voting interests of a licensee or a person in  
92 control of a licensee;

93 (2) A person that acquires control of a licensee by devise or descent;

94 (3) A person that acquires control of a licensee as a personal representative, custodian,  
95 guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction,  
96 or by operation of law;

97 (4) A person that is otherwise exempt under this article;

98 (5) A person that the commissioner determines is not subject to subsection (c) of this  
99 section based on the public interest;



100 (6) A public offering of securities of a licensee or a person in control of a licensee; or

101 (7) An internal reorganization of a person in control of the licensee where the ultimate  
102 person in control of the licensee remains the same.

103 (m) Persons in subdivisions (2), (3), (4), (6), or (7) of subsection (l) of this section, in  
104 cooperation with the licensee, shall notify the commissioner within 15 days after the acquisition  
105 of control.

106 (n) Streamlined acquisition of control:

107 (1) The requirements of subsections (c) and (d) of this section do not apply to a person  
108 that has complied with and received approval to engage in mortgage activity under this article or  
109 was identified as a person in control in a prior application filed with and approved by the  
110 commissioner or pursuant to a multistate licensing process: *Provided, That:*

111 (A) The person has not had a license revoked or suspended or controlled a licensee that  
112 has had a license revoked or suspended while the person was in control of the licensee in the  
113 previous five years;

114 (B) If the person is a licensee, the person is well managed and has received at least a  
115 satisfactory rating for compliance at its most recent examination by a reciprocal state or federal  
116 agency approved by the division if such rating was given;

117 (C) The licensee to be acquired is projected to meet the requirements of net worth and  
118 surety bond after the acquisition of control is completed, and if the person acquiring control is a  
119 licensee, that licensee is also projected to meet the requirements of net worth and surety bond  
120 after the acquisition of control is completed;

121 (D) The licensee to be acquired will not implement any material changes to its business  
122 plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that  
123 licensee also will not implement any material changes to its business plan as a result of the  
124 acquisition of control; and

125 (E) The person provides notice of the acquisition in cooperation with the licensee and  
126 attests to the requirements in this subsection in a form and in a medium prescribed by the  
127 commissioner.

128 (2) If the notice is not disapproved within 30 days after the date on which the notice was  
129 determined to be complete, the notice is deemed approved.

130 (o) Before filing an application for approval to acquire control of a licensee, a person may  
131 request in writing a determination from the commissioner as to whether the person would be  
132 considered a person in control of a licensee upon consummation of a proposed transaction. If the  
133 commissioner determines that the person would not be a person in control of a licensee, the  
134 proposed person and transaction is not subject to the requirements of this section.

**§31-17-6. Minimum tangible net worth to be maintained; bond to be kept in full force and effect; foreign corporation to remain qualified to do business in this state.**

1 At all times, a lender and broker licensee shall: (1) Have available the tangible net worth  
2 required by the provisions of §31-17-4 of this code; (2) keep the bond required by said section in  
3 full force and effect; and (3) if the licensee be a foreign corporation, remain qualified to transact  
4 business in this state unless otherwise exempt.

**§31-17-7. License not transferable or assignable; license may not be franchised; renewal of license.**

1 (a) A license may not be transferable or assignable. A licensee may not offer a franchise  
2 under that license to another person. The commissioner may allow licensees to have branch  
3 offices without requiring additional licenses provided the location of all branch offices is registered  
4 with the Division of ~~Banking~~ Financial Institutions by the licensee. Whenever a licensee changes  
5 his or her place of business to a location other than that set forth in his or her license and branch  
6 registration, he or she shall give written notice 30 days prior to such change to the commissioner  
7 and pay a relocation fee of \$100 for each office relocation.

8 (b) Every lender's or broker's license shall, unless sooner suspended or revoked, expire  
9 on December 31 of each year and any license may be renewed each year in the same manner,  
10 for the same license fee or fees specified above and upon the same basis as an original license  
11 is issued in accordance with the provisions of this article. All applications for the renewal of  
12 licenses shall be filed with the Nationwide ~~Mortgage~~ Multistate Licensing System and Registry  
13 according to the renewal schedule published for the system, but no later than 60 days before the  
14 expiration thereof.

15 (c) Any change in control of a licensee whereby equitable interest of 50 percent or more  
16 is transferred to an outside party, a new application must be submitted according to this article.

**§31-17-11. Records and reports; examination of records; analysis.**

1 (a) Every lender and broker licensee shall maintain at his or her place of business in this  
2 state, if any, or if he or she has no place of business in this state, at his or her principal place of  
3 business outside this state, such books, accounts and records relating to all transactions within  
4 this article as are necessary to enable the commissioner to enforce the provisions of this article.  
5 All the books, accounts and records shall be preserved, exhibited to the commissioner and kept  
6 available as provided herein for the reasonable period of time as the commissioner may by rules  
7 require. The commissioner is hereby authorized to prescribe by rules the minimum information to  
8 be shown in the books, accounts and records.

9 (b) Each licensee shall file a report through the Nationwide ~~Mortgage~~ Multistate Licensing  
10 System and Registry under oath or affirmation concerning his or her business and operations in  
11 this state for the defined reporting period established by the Nationwide ~~Mortgage~~ Multistate  
12 Licensing System and Registry and on a date established by the Nationwide ~~Mortgage~~ Multistate  
13 Licensing System and Registry. The commissioner may direct that the reports required by this  
14 subsection and any other reports, data or information deemed necessary by the commissioner be  
15 filed directly with the Division of Financial Institutions on a date to be determined by the

16 commissioner. The reports, data and information filed pursuant to this subsection are not public  
17 records and may not be open to public inspection.

18 (c) The commissioner may, at his or her discretion, make or cause to be made an  
19 examination of the books, accounts and records of every lender or broker licensee pertaining to  
20 primary and subordinate mortgage loans made in this state under the provisions of this article, for  
21 the purpose of determining whether each lender and broker licensee is complying with the  
22 provisions hereof and for the purpose of verifying each lender or broker licensee's annual report.  
23 If the examination is made outside this state, the licensee shall pay the cost thereof in like manner  
24 as applicants are required to pay the cost of investigations outside this state.

25 (d) The commissioner shall publish annually a list of the licenses issued under this chapter  
26 and shall direct consumers to public information available through the Nationwide ~~Mortgage~~  
27 Multistate Licensing System and Registry.

28 (e) The commissioner may enter into cooperative and information-sharing agreements  
29 with regulators in other states or with federal authorities to discharge his or her responsibilities  
30 under this article and may cooperate with federal and state agencies in discharging the  
31 commissioner's responsibilities under this article. The commissioner may:

32 (1) Arrange for the exchange of information among government officials concerning the  
33 regulation of the mortgage industry;

34 (2) Cooperate in and coordinate training programs concerning the regulation of the  
35 mortgage industry;

36 (3) Assist state and federal agencies in their enforcement and investigatory activities and  
37 supply those agencies with documentation and information; and

38 (4) Share, leverage, and accept examination reports from other state regulatory agencies  
39 that meet established and agreed upon uniform standards.

40 (f) Reports of investigation and examination, together with related documents and financial  
41 information not normally available to the public that is submitted in confidence by a person

42 regulated under this article, including, but not limited to, that person's evaluation of the expected  
43 outcome of pending litigation, are confidential and may not be disclosed to the public by the  
44 commissioner or employees of the Division of Financial Institutions, and are not subject to the  
45 state's Freedom of Information Act. The commissioner may release information if:

46 (1) The commissioner finds that immediate and irreparable harm is threatened to the  
47 licensee's customers, or potential customers, or the general public;

48 (2) The licensee consents before the release;

49 (3) The commissioner finds that release of the information is required in connection with  
50 a hearing under this article, in which event information may be related to the parties of that  
51 hearing; or

52 (4) The commissioner finds that the release is reasonably necessary for the protection of  
53 the public and in the interest of justice, in which event information may be distributed to  
54 representative of an agency, department, or instrumentality of this state, any other state, or the  
55 federal government.

56 (g) Nothing in this section prevents release to the public of any list of licensees or  
57 aggregated financial data for the licensees, prevents disclosure of information the presiding officer  
58 considers relevant to the proper adjudication or administration of justice at public administrative  
59 or judicial hearings, or prevent disclosure of information relative to supporting the issuance of any  
60 administrative or judicial order.

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

**§31-17A-9a. Permitting employees to work from alternate locations.**

1 (a) Notwithstanding any provision of this article to the contrary, but subject to the  
2 requirements of this section, employees of a West Virginia mortgage broker, lender, or servicer  
3 licensee may perform work for the licensee at their residence: *Provided*, That nothing in this  
4 subsection restricts employees of the licensee from conducting business at other locations for  
5 limited periods of time. Any activity conducted by an employee of the West Virginia licensee shall

6 be considered, reported, and regulated as loans of the West Virginia licensee, regardless of the  
7 employee's location during the activity.

8 (b) A licensee, prior to authorizing work by employees at a location other than the  
9 licensee's designated place of business, shall ensure the following:

10 (1) No in-person customer interactions will be conducted at the other location;

11 (2) The other location is not designated as a business location to consumers or customers;

12 (3) Appropriate data security and privacy safeguards are in place for licensee and  
13 consumer data, information, and records at the other location, including, but not limited to, the  
14 use and maintenance of secure virtual private networks and maintenance of appropriate security  
15 updates, patches, or other alterations to ensure the security of electronic devices;

16 (4) Appropriate risk-based monitoring and oversight processes of work performed by the  
17 employees of a licensee at the other location are in place, and records of such monitoring and  
18 processes are maintained;

19 (5) No consumer information or records are maintained at the other location;

20 (6) All consumer and licensee information and records remain accessible and available  
21 for regulatory oversight and examinations;

22 (7) Employees are trained and keep confidential all conversations about, and with,  
23 consumers that may be conducted at the other location; and

24 (8) The other location is a safe and secure workplace for employees.

25 (c) A licensee, prior to authorizing work at a location other than the licensee's designated  
26 place of business, shall establish written policies and procedures to ensure compliance with the  
27 requirements of subsection (b) of this section.

28 (d) A licensee that authorizes work at another location pursuant to this section shall:

29           (1) Periodically review and document compliance with the provisions of this section and  
30 the written policies and procedures established pursuant to subsection (c) of this section as it  
31 relates to every employee who works at another location;

32           (2) Certify annually that the provisions of this section have been met as to each employee  
33 working at another location; and

34           (3) Provide proof of the periodic review and certification upon request by the Division of  
35 Financial Institutions.