WEST VIRGINIA CODE: §31-17-1

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

As used in this article:

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

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

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

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

(3) If not included in the cash price:

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

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

(C) Additional charges permitted by this article;

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

(d) "Broker" means any person acting in the regular course of business who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, or originates or assigns a primary or subordinate mortgage loan between a lender and a borrower. A person is considered to be acting in the regular course of business if he or she negotiates or arranges, or offers to negotiate or arrange, or originates, processes, or assigns any primary or subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower, or receive from a borrower, money or other valuable consideration in any primary or subordinate mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower;

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

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

(g) "Control" means:

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

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

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

(2) Rebuttable presumption of control:

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

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

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

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

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

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

"Lender" does not include any person who does not currently have, and has never held, a residential mortgage lender license in this, or in any other state, and who makes no more

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than three primary or subordinate mortgage loans in any calendar year to purchasers of any dwelling owned by that person: *Provided*, That the person is required to report within 30 days of the date of the loan, any such mortgage loan to the Division of Financial Institutions, on a form available from the division upon request. Failure to timely report as required by this subsection may result in imposition by the commissioner of a civil administrative penalty of up to $250;

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

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

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

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

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

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

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

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